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federal register

Friday
April 18, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Dallas, TX, and Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23,
Earl Cabell Federal Building,
1100 Commerce Street, Dallas, TX.

RESERVATIONS: local numbers:

Dallas	214-767-8585
Ft. Worth	817-334-3624
Austin	512-472-5494
Houston	713-229-2552
San Antonio	512-224-4471, for reservations

WASHINGTON, DC

WHEN: May 15; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Laurence Davey 202-523-3517

Contents

Federal Register
Vol. 51, No. 75
Friday, April 18, 1986

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
5460 13203
Executive Orders:
12556 13205

7 CFR
246 13207
925 13208
944 13208

8 CFR
238 (3 documents) 13209, 13210

14 CFR
39 13211

18 CFR
3 13211

21 CFR
179 13376
520 13212

26 CFR
301 13212
Proposed Rules:
301 13231

27 CFR
19 13215
240 13215

29 CFR
Proposed Rules:
553 (3 documents) 13402, 13411, 13413

32 CFR
706 (2 documents) 13217

33 CFR
117 13218

34 CFR
614 13219

40 CFR
704 13220
Proposed Rules:
60 13424
721 13250

42 CFR
442 13224

43 CFR
3480 13228

44 CFR
Proposed Rules:
205 (6 documents) 13332, 13336, 13340, 13341, 13357, 13364

45 CFR
Proposed Rules:
5 13250

47 CFR
0 13229
Proposed Rules:
21 13258
73 (4 documents) 13259, 13260, 13262, 13263

Federal Register
Vol. 51, No. 75
Friday, April 18, 1986

Presidential Documents

Title 3—

The President

Proclamation 5460 of April 16, 1986

Law Day U.S.A., 1986

By the President of the United States of America

A Proclamation

May 1, 1986, is Law Day U.S.A. It is traditionally a time to focus our Nation's attention on the importance of the rule of law in our free society. But this year's Law Day has special significance. Its theme, "Foundations of Freedom," is designed to prepare all citizens for an important event in America's history: the Bicentennial of the United States Constitution in 1987.

The foundations of freedom upon which our Nation was built include the Magna Carta of 1215, English common law, the Mayflower Compact, the Act of Parliament abolishing the Court of Star Chamber, and numerous colonial charters. These and similar precedents, rooted in a firm conviction of the worth and dignity of the human person, articulated fundamental concepts, such as due process of law, trial by jury, and freedom of speech. In drafting the Constitution, our forefathers sought to embody these concepts in a single document, creating a rule of law that continues to "secure the blessings of liberty to ourselves and our posterity. . . ."

Our written Constitution has been in existence for 200 years, longer than that of any other nation in the world. Although our Nation has grown from 13 isolated agricultural States to an industrialized society of 240 million people, the text of the Constitution provides today, as it did in 1787, a blueprint for a functioning republic with well-considered and workable guidelines for democratic self-government. Its endurance is a tribute not only to the wisdom of the authors of that great document, but to all the citizens who, in our courts and legislatures, have fought to uphold its vital guarantees. It is also a testament to a two-hundred-year-old tradition of freedom through voluntary adherence to the rule of law. Because of the vigilance of the American people, we continue to be a country governed by law, rather than by force or the whim of a few self-proclaimed leaders.

Law Day U.S.A. is an important opportunity for all Americans to examine the historical precedents that led to the establishment of the rule of law in America through the United States Constitution, and consequently to improve our understanding and appreciation of the important contribution these sources made to the creation of our free society. As we observe Law Day, I urge everyone to join me in renewing our dedication to the foundations of our freedom, principles that ensure that, in this Nation, all men and women will continue to be free, enjoying the full and equal protection of the law.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim Thursday, May 1, 1986, as Law Day U.S.A. I urge the people of the United States to use this occasion to renew their commitment to the rule of law and to reaffirm our dedication to the principles embodied in the documents that form the foundations of our freedom. I call upon the legal profession, schools, civic, service and fraternal organizations, public bodies, libraries, the courts, the communications media, business, the clergy, and all interested individuals and organizations to join in efforts to focus attention on the need for the rule of law. I also call upon all public officials to display the flag of the United States on all government buildings on Law Day, May 1, 1986.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of April, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-8926
Filed 4-17-86; 10:35 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of April 16 on signing Proclamation 5460, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 16).

Presidential Documents

Executive Order 12556 of April 16, 1986

Mailing Privileges of Members of Armed Forces of the United States and of Friendly Foreign Nations

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *Delegation of Functions.* The function conferred upon the President by section 3401(a) of title 39 of the United States Code, of designating an area for free mailing privileges, is delegated to the Secretary of Defense.

Sec. 2. *Interagency Consultation.* In performing the function delegated by this Order, the Secretary of Defense shall consult with the Secretary of State and the United States Postal Service, and with the heads of other Executive agencies as appropriate. The Secretary of Defense shall provide timely notice to the United States Postal Service of any designations or terminations of designations made under this Order.

Ronald Reagan

THE WHITE HOUSE,
April 16, 1986.

[FR Doc. 86-8927
Filed 4-17-86; 10:36 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 75
Friday, April 18, 1986

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Selected Provision of the Food Package Regulations for the Special Supplemental Food Program for Women, Infants and Children (WIC Program)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: Food package regulations, published originally on November 12, 1980 (45 FR 74854) and subsequently consolidated in the full regulations on February 13, 1985 (50 FR 6108), allow only unflavored milk for women and Children participants of the Special Supplemental Food Program for Women, Infants and children (WIC Program). The U.S Department of Agriculture (USDA) is under court order to reinstate a provision of the previous food package rules which authorized both flavored or unflavored milk. This final rule, which responds to the court's order, allows flavored or unflavored milk in Food Package VI for children 1–5 years, Food Package V for pregnant and breastfeeding women, and Food Package IV for nonbreastfeeding postpartum women. In implementing this rule, State agencies have the authority to continue the longstanding policy of determining allowable WIC foods for use in their States to conform with their State nutrition policies, within the Federal guidelines set forth the WIC regulations.

EFFECTIVE DATE: This final rule is effective April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756 3746.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291, and has been classified as nonmajor. USDA does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local agencies; or geographic regions. Nor will this rule have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L 96–354). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that this final rule does not have a significant economic impact on a substantial number of small entities.

This rule contains no reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

The WIC Program is listed in the Catalog of Federal Domestic Assistance under No. 10.577. The WIC Program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).

Background

The current food package regulations, published on November 12, 1980, and subsequently incorporated into a consolidation of WIC Program regulations published on February 13, 1985, exclude flavored milk as an allowable food. However, the proposed regulations published in 1979 that preceded the 1980 final rule would have permitted the use of flavored milk, a continuation of previous food package rules published August 26, 1977.

During a 60-day comment period provided by the 1979 proposed rule, seventy-eight commenters addressed the issue of flavored milk and suggested its deletion. Based in those comments, USDA removed flavored milk from the list of allowable foods in Food Packages IV, V and VI.

In the summer of 1983, the Chocolate Manufacturers Association (CMA) sued USDA over the administrative rulemaking procedures used in deleting flavored milk. *Chocolate Manufacturers Association of U.S.* v. *Black*, USDC ED Va. Civ. No. 83–0486–A.

On April 30, 1985, on remand from the U.S. Court of Appeals for the Fourth Circuit, the District Court ordered USDA to reinstate the provision contained in the final rule of August 26, 1977, based on the finding that the 1979 proposed rules did not provide interested parties reasonable notice of possible exclusion of flavored milk from the food packages.

This final rule fully implements the court order by reinstating and retaining flavored milk as an approved supplemental food in Food Packages IV, V and VI. In implementing this new rule, State agencies have the authority, consistent with current regulations, to identify the types and brands of foods, among those federally allowed, to be used in their WIC food packages to conform with their State nutrition policies. However, in so doing, regulations require State agencies to "ensure that local agencies make available at least one food from each group in each food package."

Thus, in designing their food packages, State agencies may reduce quantities to meet the nutritional needs of a category of persons, restrict the variety of allowable foods within a food group, or set more stringent standards than the regulations require when identifying allowable foods in the food groups. Examples of the aforementioned include: setting a lower sugar content and/or higher iron fortification requirements for adult cereals than those established in regulations; excluding higher fat content cheeses; excluding peanut butter and allowing only dry beans or peas; excluding flavored milk; reducing the quantity of formula for breastfed infants; or, eliminating juice for infants who cannot drink from a cup.

Also, consistent with current regulations, States must notify FNS Regional Offices of statewide food package policies and their nutrition rationale. States must notify Regional Offices of their policies through their

State plans or other methods, as long as the notification is provided in writing. Regional Offices, in turn, will forward this information to the Supplemental Food Program Division, Food and Nutrition Service, USDA, Washington, DC for reference and information.

The Department intends to review its policy concerning the inclusion of flavored milk in the WIC food packages. In so doing, the Department will examine any possible negative nutritional or economic impacts from including flavored milk in the packages against the benefits of improved acceptability among program participants. The Department will also examine recent findings that flavored milk may be better tolerated by individuals suffering from lactose intolerance than is unflavored milk. Depending on the results of this review, the Department may revisit this issue in a future rulemaking.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs, Indians, infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance, WIC, Women.

PART 246—[AMENDED]

Accordingly, 7 CFR Part 246 is amended as follows:

1. The authority citation for Part 246 continues to read as follows:

Authority: Child Nutrition Amendments of 1978, Pub. L. 95–627, 92 Stat. 3603 et seq., unless otherwise noted.

2. In § 246.10, paragraphs (c)(4)(i), (c)(5)(i), and (c)(6)(i) are revised to read as follows:

§ 246.10 Supplemental foods.

* * * * *

(c) * * *

(4) *Food Package IV—Children 1 to 5 Years.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

* * * * *

(5) *Food Package V—Pregnant and Breastfeeding Women.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of Vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part Skim or Whole).

* * * * *

(6) *Food Package VI—Non-breastfeeding Postpartum Women.* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of vitamin D per quart (.9 liter); or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of Vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

* * * * *

Dated: April 11, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–8723 Filed 4–17–86; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California and Imported Into the United States; Delay of Effective Dates of 1986 Season Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule delays the effective dates of the 1986 season domestic and import regulations for table grapes to April 22 and April 26, 1986. Currently, the domestic requirements and those for imports arriving by other than ocean transport are effective April 15; those for imports arriving than ocean transport are effective April 19. This action is needed to take into account a later harvest date for domestic grapes than was previously expected.

EFFECTIVE DATE: April 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that about 22 handlers of California desert grapes are currently subject to regulation under the marketing order for California desert grapes and that approximately 50 importers of table grapes will be subject to this action under the table grape import regulation during the course of the current season and that the great majority of these groups may be classified as small entities. While regulations issued under this order and corresponding import requirements impose some costs on affected handlers and importers and the number of such persons may be substantial, the added burden on small entities, if present at all, is not significant.

This action modifies the final rule establishing California Desert Grape Regulation 6 (§ 925.304) under the marketing agreement and Order No. 925 (7 CFR 925) and the Table Grape Import Regulation 4 (§ 944.503) issued in conjunction with the domestic regulation. The marketing agreement and order regulate the handling of table grapes grown in a designated area of southeastern California and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The import regulation is issued pursuant to section 8e of the Act.

That final rule establishing 1986 season domestic and import requirements was published in the Federal Register on April 11, 1986 (51 FR 12498). It established an effective date of April 15, 1986, for the regulated varieties of domestic grapes and imports arriving by other than ocean transport, and April 19, 1986, for grapes arriving by ocean transport. This final rule delays the effective date of the domestic requirements until April 22, 1986, and those for imports until April 26, 1986.

California Desert Grape Regulation 6 (§ 925.304; 51 FR 12498) was made effective April 15, 1986, because the domestic harvest and shipments were expected to begin about two weeks earlier than usual. Due to recent cooler weather in the production area, it now appears that harvesting of grapes covered under the California desert grape regulation will begin on or about April 22, 1986. Thus, the effective date of the domestic requirements is delayed from April 15, 1986, to April 22, 1986.

Pursuant to section 8e (7 U.S.C. 608e–1) of the Act, regulations on the importation of table grapes have to be effective during the period the domestic requirements are in effect. The April 19 effective date contemplated domestic shipments to begin about April 15. Because the domestic shipments are expected to begin later than initially expected, the effective date of Table Grape Import Regulation 4 applicable to imports is being delayed until April 26, 1986, for all imports regardless of how they arrive.

After consideration of all relevant information, it is hereby found that the delay in the effective date of the domestic and import grape requirements as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure and that good cause exists for not postponing the effective date of this action until 30 days after publication thereof in the Federal Register (5 U.S.C. 553) in that (1) This action delays the effective dates of the domestic requirements and import requirements based upon those requirements to reflect the anticipated later beginning of the 1986 domestic harvest and shipping season; and (2) it must be effective promptly to provide adequate notice of the changes to affected persons.

List of Subjects

7 CFR Part 925

Marketing agreements and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

PARTS 925 AND 944—[AMENDED]

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Therefore, California Desert Grape Regulation 6 (§ 925.304; 51 FR 12498) is revised by amending the introductory text, and Table Grape Import Regulation 4 (§ 944.503; 51 FR 12498) is revised by amending paragraph(a)(3) to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 22 through August 15, 1986, and May 1 through August 15 of each year thereafter, no person shall pack or repack any such grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e) of this section nor handle any variety of grapes, except Emperor, Calmeria, and Riber varieties, unless such grapes meet the following requirements:

* * * * *

§ 944.503 Table Grape Import Regulation 4.

(a) * * *

(3) All regulated varieties of grapes offered for importation during the period April 26 through August 15, 1986, and May 1 through August 15 of each year thereafter shall be subject to the grape import requirements.

* * * * *

Dated: April 15, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricutural Marketing Service.

[FR Doc. 86–8814 Filed 4–16–86; 11:24 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Challenge International Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Challenge International Airlines.

EFFECTIVE DATE: April 9, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Challenge International

Airlines to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Challenge International Airlines under "at Nassau".

Dated: April 11, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-8765 Filed 4-17-86; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Addition of Royal Cruise Line

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Royal Cruise Line.

EFFECTIVE DATE: April 9, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Royal Cruise Line to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines in amended by adding the name Royal Cruise Line under "at Victoria".

Dated: April 9, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-8764 Filed 4-17-86; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 288

Contracts With Transportation Lines; Addition of Royal Hawaiian Air Service

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Royal Hawaiian Air Service to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: April 9, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Royal Hawaiian Air Service on April 9, 1986, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding

in alphabetical sequence, Royal Hawaiian Air Service.

Dated: April 11, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-8766 Filed 4-17-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-93-AD; Amdt. 39-5290]

Airworthiness Directives; British Aerospace Aircraft Group Model HS 748 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires wiring changes to the emergency lighting system on certain British Aerospace (BAe) Model HS 748 series airplanes. This action is prompted by the manufacturer's analysis and is necessary to prevent the emergency lighting system powerpack from becoming accidentally disarmed.

DATE: Effective May 26, 1986.

ADDRESS: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires wiring changes to the emergency lighting system on certain BAe Model HS 748 series airplanes was published in the Federal Register on October 1, 1985 (50 FR 40034).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 4 airplanes will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $200 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,720.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($680.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace Aircraft Group: Applies to Model HS 748, constructor numbers 1793, 1794, and 1795 (Mod 402); and 1796 (Mod 400); and to any other airplanes which incorporate Modification 6953, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent the accidental disarming of the emergency lighting system, accomplish the following, unless previously accomplished.

1. Modify the emergency lighting system in accordance with BAe Model HS 748 Service Bulletin 33/29, dated April 2, 1984.

2. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 26, 1986.

Issued in Seattle, Washington, on April 11, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-8673 Filed 4-17-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 3

[Docket No. RM82-35-000]

Freedom of Information; Fees Applicable to General Activities; Correction

April 16, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; errata notice.

SUMMARY: On April 4, 1986, the Commission issued a final rule updating the fees charged under the Freedom of Information Act (51 FR 12137, April 9, 1986). By this notice, Item 3 of the rule is corrected to read as follows: "Section 3.8(k)(2)(ii) is amended by removing the number "$2.40" and inserting, in its place, the number "$3.81"."

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8756 Filed 4-17-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Mebendazole and Trichlorfon Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pitman-Moore, Inc., providing for safe and effective use of a paste containing mebendazole and trichlorfon as a boticide and anthelmintic in horses.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Washington Crossing, NJ 08560, filed NADA 138-954 providing for oral administration to horses by dose syringe of Telmin™ B Paste (mebendazole-trichlorfon). The combination drug is indicated for removal of certain large roundworms, pinworms, large and small strongyles, and bots. The NADA is approved, and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a signficant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 520 is amended by redesignating § 520.1326 as § 520.1326a and revising its section heading and by adding new §§ 520.1326 and 520.1326b, to read as follows:

§ 520.1326 Mebendazole and trichlorfon oral dosage forms.

§ 520.1326a Mebendazole and trichlorfon powder.

* * * * *

§ 520.1326b Mebendazole and trichlorfon paste.

(a) *Specifications.* Each gram of paste contains 100 milligrams of mebendazole and 454 milligrams of trichlorfon.

(b) *Sponsor.* See No. 011716 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 8.8 milligrams of mebendazole and 40 milligrams of trichlorfon per kilogram of body weight.

(2) *Indications for use.* It is used in horses for treatment of infections of bots *(Gastrophilus intestinalis* and *G. nasalis),* large roundworms *(Parascaris equorum),* large strongyles *(Strongylus edentatus, S. equinus, S. vulgaris),* small strongyles, and pinworms *(Oxyuris equi).*

(3) *Limitations.* Do not administer more than once every 30 days. Do not treat sick or debilitated animals, foals under 4 months of age, or mares in the last month of pregnancy. Trichlorfon is a cholinesterase inhibitor. Do not administer simultaneously or within a few days before or after treatment with, or exposure to, cholinesterase-inhibiting drugs, pesticides, or chemicals. Do not administer intravenous anesthetics, especially muscle relaxants, concurrently. Not for use in horses intended for food. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: April 11, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-8735 Filed 4-17-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8082]

Procedure and Administration; Definition of Partnership Item

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Regulations on Procedure and Administration relating to the definition of "partnership item" under the rules for the tax treatment of partnership items. The Tax Equity and Fiscal Responsibility Act of 1982 prescribed those rules. Code section 6231(a)(3) provides that a "partnership item" is any item that must be taken into account for a taxable year of a partnership under any income tax provision to the extent that the regulations provide that the item is more appropriately determined at the partnership level. This document sets forth items that the Service considers to be more appropriately determined at the partnership level than at the partner level. These regulations provide guidance to partners, partnerships, and Internal Revenue Service personnel for compliance with the tax law.

DATES: The regulations shall apply with respect to partnership taxable years beginning after September 3, 1982. However, if a partnership and the Service agree to accelerate the effective date for the consolidated proceedings pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, the regulations shall apply with respect to that partnership for any partnership taxable year ending after September 3, 1982.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) Telephone 202-566-3318 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) there was no mechanism for making tax adjustments at the partnership level since the partnership was not the taxable entity. The Service could not require all partners to join in a single consolidated administrative or judicial

proceeding with respect to partnership issues even if the issues were common to all partners. Section 402 of TEFRA added sections 6221–6231 to the Internal Revenue Code to allow for consolidated administrative and judicial proceedings to determine the tax treatment of "partnership items" at the partnership level rather than at the partner level.

Under Code section 6231(a)(3) a "partnership item" is any item that must be taken into account for a taxable year of a partnership under any income tax provision of the Code to the extent that the regulations provide that that item is more appropriately determined at the partnership level than at the partner level. Proposed regulations published in the **Federal Register** on January 14, 1983 (48 FR 1759) listed the items which the Service considered to be more appropriately determined at the partnership level.

Among the items listed in the proposed regulations were the "distributive share" items that the partnership must allocate to the partners (including partnership liabilities and certain special purpose data such as that necessary to enable partners to compute depletion). Also included were guaranteed payments and partnership-level determinations that have a bearing on transactions affecting particular partners. Four comments were received on these proposed regulations. No public hearing was held because none was requested. After consideration of all comments regarding the proposed regulations, the proposed regulations are adopted as revised by the Treasury decision.

The notice of proposed rulemaking would have added the proposed regulations to the Income Tax Regulations (26 CFR Part 1). Because it is more appropriate to include these provisions in the Regulations on Procedure and Administration (26 CFR Part 301), this Treasury decision redesignates the provisions.

Response to Comments

One comment suggested that the regulations make clear that determinations relating to the timing of income, deductions, and credits, including the selection of an accounting methods, depreciation, and inventory practices are partnership items. That these items are partnership items was implicit in the assumptions underlying the proposed regulations. For example, the determination of partnership taxable income of necessity includes determinations relating to the timing of income, deductions, and credits, and the accounting method and inventory practices of the partnership. In response to the comment, however, the proposed regulations are amended by adding a new paragraph (b) to make clear that the term "partnership item" includes items that affect the computation of partnership taxable income, such as the method of accounting, inventory method, taxable year, and elections of the partnership. The new paragraph also explicitly states that the term "partnership item" includes the accounting practices and the legal and factual determinations that underlie determinations as to the amount, timing, and characterization of items of income, credit, gain, loss, or deduction (for example, whether an item is currently deductible or must be capitalized, whether partnership activities have been engaged in with the intent of earning a profit for purposes of section 183, or whether the partnership qualifies for the research and development credit under section 30).

It was also suggested that the regulations address whether "coverage" issues (that is, issues that relate to whether the rules apply to a particular entity or item) are themselves partnership items. The most important of these coverage issues is whether the entity in question is a partnership. Section 6233, which was added to the Code by section 714(p)(1) of the Tax Reform Act of 1984, generally provides for extension of the rules for consolidated proceedings to an entity that files a partnership return (or S corporation return). A notice of proposed rulemaking under section 6221 through 6231 and section 6233 is set forth in the Proposed Rules section of this issue of the **Federal Register**.

One comment expressed concern that the inclusion of guaranteed payments as a partnership item could eliminate the availability of the "small partnership exception" under section 6231(a)(1)(B) to partnerships that would otherwise qualify as small partnerships. Section 6231(a)(1)(B) requires each partner's share of each partnership item to be the same as the partner's share of every other item. In the case of a guaranteed payment, the recipient's share of that item (100 percent) would be different than the recipient's share of other items. The notice of proposed rulemaking under section 6231(a)(1)(B), set forth in the Proposed Rules section of this issue of the **Federal Register**, addresses this issue.

One comment suggested that a transferee partner's basis in a partnership interest should not be treated as a partnership item even if the partnership has made an election under section 754. The commenter stated that if the partnership disagrees with the transferee partner's determinations regarding amounts paid for the partnership interest (*e.g.*, whether some parts of the consideration were interest rather than principal), the partner should be entitled to dispute the partnership's determination of that item. This suggestion is not adopted in the final regulations. The determination of the transferee partner's basis in his partnership interest is a partnership item because that determination is necessary in order for the partnership to make certain partnership-level determinations with respect to the transferee partner's basis in partnership property. Treating an item as a partnership item does not deprive a partner of the right to disagree with the treatment of that item by the partnership.

The phrase "(including necessary preliminary determinations, such as the partner's basis in the contributed property)" is added to §301.6231(a)(3)–1(c)(2)(iv) to make clear that the partner's basis in property contributed to a partnership is a partnership item.

Two comments pointed out that personal arrangements between a partner and third parties may be relevant in determining to what extent a partner is "at risk" in a partnership activity to which section 465 applies. The commenters expressed concern that proposed §1.6231(a)(3)–1(a)(1)(vi)(c) treated these personal arrangement as "partnership items." The final regulations add the phrase "determinable at the partnership level" to § 301.6231(a)(3)–1(a)(1)(vi)(c) to make clear that such personal arrangements are not partnership items.

The final regulations delete an erroneous example in the proposed regulations. That example indicated that the partnership would not need to make any determinations as to the partnership interest constructively owned by a partner with whom the partnership engages in a transaction governed by section 707(a). The partnership may at times need to make a determination with respect to constructive ownership.

The final regulations delete paragraphs (a)(4)(iv), (a)(4)(v), and (b)(4) of proposed § 1.6231(a)(3)–1 and instead include determinations with respect to the application of section 751 (a) and (b) under § 301.6231(a)(3)–1(a)(1)(vi).

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a

Regulatory Impact Analysis is therefore not required.

Pursuant to 5 U.S.C. 605(b), it is hereby certified that the requirements of the Regulatory Flexibility Act do not apply to this final regulation because it will not have a significant economic impact on a substantial number of small entities. The final regulation does not impose a significant economic burden on taxpayers; the regulation merely defines the items that are within the scope of the new rules for consolidated partnership proceedings.

Drafting Information

The principal author of these regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sec. 301.6231(a)(3)–1 also issued under 26 U.S.C. 6230(k) and 6231(a)(3).

Par. 2. There is inserted in the appropriate place the following new section:

§ 301.6231 (a)(3)–1 Partnership items.

(a) *In general.* For purposes of subtitle F of the Internal Revenue Code of 1954, the following items which are required to be taken into account for the taxable year of a partnership under subtitle A of the Code are more appropriately determined at the partnership level than at the partner level and, therefore, are partnership items:

(1) The partnership aggregate and each partner's share of each of the following:

(i) Items of income, gain loss, deduction, or credit of the partnership;

(ii) Expenditures by the partnership not deductible in computing its taxable income (for example, charitable contributions);

(iii) Items of the partnership which may be tax preference items under section 57(a) for any partner;

(iv) Income of the partnership exempt from tax;

(v) Partnership liabilities (including determinations with respect to the amount of the liabilities, whether the liabilities are nonrecourse, and changes from the preceding taxable year); and

(vi) Other amounts determinable at the partnership level with respect to partnership assets, investments, transactions and operations necessary to enable the partnership or the partners to determine—

(A) The investment credit determined under section 46(a);

(B) Recapture under section 47 of the investment credit;

(C) Amounts at risk in any activity to which section 465 applies;

(D) The depletion allowance under section 613A with respect to oil and gas wells; and

(E) The application of section 751 (a) and (b);

(2) Guaranteed payments;

(3) Optional adjustments to the basis of partnership property pursuant to an election under section 754 (including necessary preliminary determinations, such as the determination of a transferee partner's basis in a partnership interest); and

(4) Items relating to the following transactions, to the extent that a determination of such items can be made from determinations that the partnership is required to make with respect to an amount, the character of an amount, or the percentage interest of a partner in the partnership, for purposes of the partnership books and records or for purposes of furnishing information to a partner:

(i) Contributions to the partnership;

(ii) Distributions from the partnership; and

(iii) Transactions to which section 707(a) applies (including the application of section 707(b)).

(b) *Factors that affect the determination of partnership items.* The term "partnership item" includes the accounting practices and the legal and factual determinations that underlie the determination of the amount, timing, and characterization of items of income, credit, gain, loss, deduction, etc. Examples of these determinations are: The partnership's method of accounting, taxable year, and inventory method; whether an election was made by the partnership; whether partnership property is a capital asset, section 1231 property, or inventory; whether an item is currently deductible or must be capitalized; whether partnership activities have been engaged in with the intent to make a profit for purposes of section 183; and whether the partnership qualifies for the research and development credit under section 30.

(c) *Illustrations*—(1) *In general.* This paragraph (c) illustrates the provisions of paragraph (a)(4) of this section. The determinations illustrated in this paragraph (c) that the partnership is required to make are not exhaustive; there may be additional determinations that the partnership is required to make which relate to a transaction listed in paragraph (a)(4) of this section. The critical element is that the partnership needs to make a determination with respect to a matter for the purposes stated; failure by the partnership actually to make a determination (for example, because it does not maintain proper books and records) does not prevent an item from being a partnership item.

(2) *Contributions.* For purposes of its books and records, or for purposes of furnishing information to a partner, the partnership needs to determine:

(i) The character of the amount received from a partner (for example, whether it is a contribution, a loan, or a repayment of a loan);

(ii) The amount of money contributed by a partner;

(iii) The applicability of the investment company rules of section 721(b) with respect to a contribution; and

(iv) The basis to the partnership of contributed property (including necessary preliminary determinations, such as the partner's basis in the contributed property).

To the extent that a determination of an item relating to a contribution can be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that determination is not a partnership item. For example, it may be necessary to determine whether contribution of the property causes recapture by the contributing partner of the investment credit under section 47 in certain circumstances in which that determination is irrelevant to the partnership.

(3) *Distributions.* For purposes of its books and records, or for purposes of

furnishing information to a partner, the partnership needs to determine:

(i) The character of the amount transferred to a partner (for example, whether it is a distribution, a loan, or a repayment of a loan);

(ii) The amount of money distributed to a partner;

(iii) The adusted basis to the partnership of distributed property; and

(iv) The character of partnership property (for example, whether an item is inventory or a capital asset).

To the extent that a determination of an item relating to a distribution can be made from these and similar determinations that the partnership is required to make, therefore, the determination is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. Such other information would include those factors used in determining the partner's basis for the partnership interest that are not themselves partnership items, such as the amount that the partner paid to acquire the partnership interest from a transferor partner if that transfer was not covered by an election under section 754.

(4) *Transactions to which section 707 (a) applies.* For purposes of its books and records, the partnership needs to determine:

(i) The amount transferred from the partnership to a partner or from a partner to the partnership in any transaction to which section 707(a) applies;

(ii) The character of such an amount (for example, whether or not it is a loan; in the case of amounts paid over time for the purchase of an asset, what portion is interest); and

(iii) The percentage of the capital interests and profits interests in the partnership owned by each partner.

To the extent that a determination of an item relating to a transaction to which section 707(a) applies can be made from these and similar determinations that the partnership is required to make, therefore, that item is a partnership item. To the extent that that determination requires other information, however, that item is not a partnership item. An example of such other information is the cost to the partner of goods sold to the partnership.

(d) *Effective date.* This section shall apply with respect to partnership taxable years beginning after September 3, 1982. This section shall also apply with respect to any partnership taxable year ending after September 3, 1982, if with respect to that year there is an agreement entered into pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

Roscoe L. Egger, Jr.,

Commissioner.

Approved: April 14, 1986.

J. Roger Mentz,

Assistant Secretary Designate of the Treasury.

[FR Doc. 86-8762 Filed 4-15-86; 4:35 pm]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19 and 240

[T.D. ATF-227; RE: T.D. ATF-198 and T.D. ATF-186]

Reinstatement of T.D. ATF-186: Use of Spirits in the Production of Wine and Wine Products To Be Rendered Unfit for Beverage Use

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision without notice.

SUMMARY: This final rule reinstates the provisions of T.D. ATF-186 [49 FR 42567] published in the **Federal Register** of October 23, 1984. These provisions allowed the use of any type of distilled spirits in the production of wine and wine products which are to be rendered unfit for beverage use. In order to avoid further delay in the implementation of final "all-in-bond" regulations, ATF did not incorporate these earlier regulations in the text of T.D. ATF-198 (50 FR 8456) published in the **Federal Register** of March 1, 1985.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Legislative Background

Prior to passage on July 18, 1984, of Pub. L. 98-369 (98 Stat. 494), only paragraph (5) of section 5214(a) permitted the withdrawal without payment of tax of distilled spirits for use in wine production, as authorized by 26 U.S.C. 5373. The language in section 5373 restricted the distilled spirits used in wine production to wine spirits having a minimum proof of 140 degrees or commercial brandy aged in wood for not less than two years and barreled at not less than 100 degrees of proof.

Pub. L. 98-369 amended section 5214(a) by adding a new paragraph (13) specifically authorizing the addition of any type of spirits in the production in the United States of wines and wine products which are to be rendered unfit for beverage use. These provisions were implemented by T.D. ATF-186. Prior to the promulgation of T.D. ATF-186, AFT issued temporary regulations (T.D. ATF-62, 44 FR 71613) which implemented Pub. L. 96-39, the Distilled Spirits Tax Revision Act of 1979. These temporary regulations, commonly referred to as the "all-in-bond" regulations, completely revised and recodified Title 27, Code of Federal Regulations, Part 201, as new Part 19. T.D. ATF-198 implemented the final "all-in-bond" regulations effective June 1, 1985. These final regulations were under review for an extended period of time and did not incorporate the regulations implemented with the issuance of T.D. ATF-186. Thus, these regulations merely reinstate without change the regulations initially implemented by T.D. ATF-186.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable because this final rule will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3504(h), and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no new requirement to collect information is imposed. The recordkeeping and report filing requirements prescribed in the Title 27, Code of Federal Regulations, Part 170, Subpart Z, remain in effect and have not been altered.

Drafting Information

The principal author of this document is Michael J. Breen of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

Since this Treasury decision merely reinstates the provisions of T.D. ATF–186 (49 FR 42507) without change, it is found unnecessary and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d). Accordingly, the provisions of this final rule become effective upon publication in the **Federal Register.**

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research and security measures, Spices and flavorings, Surety bonds, Transportation, U.S. possessions, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

Authority and Issuance

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of sections in Title 27, Code of Federal Regulations, Part 19, is amended to include new § 19.534 and reads as follows:

* * * * *

Sec.

* * * * *

19.534 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

* * * * *

Par. 3. Section 19.531 in Subpart P is amended by striking out the conjunctive "or" at the end of paragraph (g), replacing the period at the end of paragraph (h) with a semicolon followed by the conjunctive "or" and a comma, and inserting new paragraph (i) to read as follows:

Subpart P—Transfers and Withdrawals

* * * * *

Withdrawal of Spirits Without Payment of Tax

§ 19.531 Authorized withdrawals without payment of tax.

Spirits may be withdrawn from bonded premises, without payment of tax for:

* * * * *

(i) Use in the production on bonded wine cellar premises of wine and wine products which will be rendered unfit for beverage use, as authorized by 26 U.S.C. 5362(d). The withdrawal of spirits as provided in paragraphs (a) through (e) of this section shall be in accordance with the regulations in Part 252 of this chapter.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1375, as amended, 1382, as amended (26 U.S.C. 5214, 5312, 5373); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 455, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5214))

* * * * *

Par. 4. Section 19.534 is added to Subpart P and reads as follows:

§ 19.534 Withdrawals of spirits for use in production of nonbeverage wine and nonbeverage wine products.

Spirits withdrawn without payment of tax may be removed, pursuant to the provisions of Part 240 of this chapter, to a bonded wine cellar for use in the production of nonbeverage wine and nonbeverage wine products in accordance with the provisions of Part 170 of this chapter.

(Sec. 455, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5214))

PART 240—WINE

Par. 5. The authority citation for Part 240 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5332, 5351, 5353, 5354, 5356–5358, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par 6. In the table of sections and in the text of Part 240, the titles of Subparts PP, QQ, and SS are revised to read as follows and the title for Subpart RR is removed and reserved

* * * * *

Subpart PP—Use of Spirits

* * * * *

Subpart QQ—Losses of Spirits in Bond

* * * * *

Subpart RR—[Reserved]

* * * * *

Subpart SS—Tax Liability for Spirits Withdrawn to a Bonded Wine Cellar

* * * * *

Par. 7. Title 27, Code of Federal Regulations, Part 240, is amended by striking the term "wine spirits" where it appears in the titles of the following sections in the table of sectons and in the text of Part 240 and inserting in its place the word "spirits": §§ 240.142, 240.167, 240.169, 240.828, 240.830, 240.831, 240.832, 240.854, 240.904a.

Par. 8. The citation of laws following the text of § 240.820 is revised to read as follows:

* * * * *

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended, 1833, as amended (26 U.S.C. 5373, 5382), as amended by sec. 455, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5214))

Par. 9. The text of § 240.822 is revised to read as follows:

§ 240.822 Withdrawal from distilled spirits plant.

The proprietor of any bonded wine cellar may withdraw and receive spirits without payment of tax from the bonded premises of a distilled spirits plant for use in the production of natural wine, or for addition to concentrated or unconcentrated juice for use in wine production, or for other uses as are authorized in this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1382, as amended (26 U.S.C. 5373), as amended by sec.

455, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5214))

Par. 10. The undesignated center heading "RECEIPT OF WINE SPIRITS" which precedes § 240.823 is revised to read "**RECEIPT OF SPIRITS**".

Par. 11. The undesignated center heading "WINE SPIRITS ADDITIONS" which precedes § 240.830 is revised to read "**SPIRITS ADDITIONS**".

Par. 12. The undesignated center heading "DISPOSITION OF UNUSED WINE SPIRITS" which precedes § 240.836 is revised to read "**DISPOSITIONS OF UNUSED SPIRITS**".

Par. 13 The undesignated center heading "SAMPLES OF WINE SPIRITS" which precedes § 240.840 is revised to read "**SAMPLES OF SPIRITS**".

Subpart RR—[Reserved]

Par. 14. Subpart RR is reserved.

Par. 15. Title 27, Code of Federal Regulations, Part 240, is amended by striking the term "wine spirits" where it appears in the texts of the following sections and inserting in its place the word "spirits": §§ 240.143, 240.169, 240.208, 240.321, 240.823, 240.828, 240.830, 240.831, 240.832, 240.839, 240.880, 240.904, 240.904a.

Signed: March 11, 1986.

W.T. Drake,

Acting Director.

Approved: April 3, 1986.

Francis A. Keating, II,

Assistant Secretary, (Enforcement).

[FR Doc. 86–8716 Filed 4–17–86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS Concord

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CONCORD (AFS 5) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a combat stores vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 31, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CONCORD (AFS 5) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a combat stores vessel. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, the publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of section 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS CONCORD	(AFS 5)							X	97

Dated: March 31, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86–8744 Filed 4–17–86; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972, Amendment; USS WORDEN

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS WORDEN (CG 18) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully within 72 COLREGS

without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 9, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS WORDEN (CG 18) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS WORDEN (CG 18) is a member of the CG 16 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS WORDEN (CG 18).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of section 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS WORDEN	CG 18						x	x	28

Dated: April 9, 1986.

Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 86-8743 Filed 4-17-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD09 85-21]

Drawbridge Requirements; Black River, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of South Haven, Michigan, the Coast Guard is changing the operation requirements governing the Dyckman Avenue bridge, mile 1.09 over the Black River at South Haven, Michigan, by permitting the number of openings to be limited during certain times and by permitting the bridge to remain closed at certain other times unless advance notice is given to open for the passage of a vessel. This change is being made because of an increase in land traffic during the day and a decrease of requests to have the bridge open for the passage of vessels at night and during the winter months. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Chief, Bridge Branch, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: On October 15, 1985, the Coast Guard published proposed rules Vol. 50, No. 199, FR 41704 concerning this amendment. The Commander, Ninth Coast Guard District, also published the proposal as a Public Notice dated 21 January 1986. In these notices interested persons were given until November 29, 1985 and February 19, 1986, respectively, to submit comments.

Drafting Information

The drafters of these regulations are Fred H. Mieser, project officer, and Lt. R. A. Pelletier, project attorney.

Discussion of Comments

No comments were received as a result of publication in the **Federal Register.** One comment was received in response to the Public Notice. The commentor requested that commercial vessels be allowed to pass through the draw as soon as possible even during the time, between the hours of 7 a.m. and 11 p.m., when the bridge need only open on the hour and half-hour, and when the draw need not open at 12 noon and 1 p.m. Since the exemption of commercial vessels during this period of time is a reasonable request, the final rule will reflect this change and such vessels will not be affected by the regulated periods. However, commercial vessels will still be required to give advance notice during those times when the bridge is not manned and an advance notice is required.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26,

1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. During the periods of time when the bridge is unattended there is little or no significant vessel traffic on the river. The periods of time when the bridge opens for the passage of vessels on a regulated schedule will relieve the problem of land traffic tie-ups due to random bridge openings for pleasure craft while still providing for the reasonable needs of navigation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE REQUIREMENTS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.624 is added as follows:

§ 117.624 Black River (South Haven).

The draw of the Dyckman Avenue bridge, mile 1.9 at South Haven, shall open as follows:

(a) From May 1 through October 14—

(1) From 7 a.m. to 11 p.m., seven days a week the draw need open only on the hour and half-hour; however, Mondays through Fridays the draw need not open at 12 noon and 1 p.m. Commercial vessels shall be passed through the draw of this bridge as soon as possible even though this regulated period is in effect.

(2) From 11 p.m. to 7 a.m., no bridgetender is required to be in continuous attendance at the bridge and the draw shall open on signal for commercial vessels and pleasure craft if at least a three hour advance notice is given.

(b) From October 15 through April 30, the draw shall open on signal for the passage of commercial vessels and pleasure craft if at least a twelve hour advance notice is given.

(c) At all times, the draw shall open as soon as possible for public vessels of the United States, state or local government vessels used for public safety and vessels in distress.

Dated: April 7, 1986.

A. M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 86–8654 Filed 4–17–86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 614

College Housing Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing loans issued under the College Housing Program. The cost reimbursement requirements for projects financed with college housing loans are amended to provide greater flexibility in the Secretary's administration of the program.

EFFECTIVE DATE: These amendments take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. When effective, these amendments will apply to college housing loans issued on or after October 1, 1981. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Charles I. Griffith, Director, Division of Higher Education Incentive Programs, Office of Higher Education Programs Office of Postsecondary Education, U.S. Department of Education (Room 3022 ROB–3), 400 Maryland Avenue SW., Washington DC 20202. Telephone: (202) 245–3253.

SUPPLEMENTARY INFORMATION: Current program regulations (34 CFR Part 614) for college housing loans to educational institutions provide that these loans may not be used to support projects for which an institution has begun construction prior to (1) filing a college housing loan application, and (2) executing a loan agreement with the Secretary. These provisions are contained in 34 CFR 614.11(a), and indicate that once construction has begun, the entire project is ineligible for college housing loan financing. In light of the proscription against construction before a loan agreement has been executed, it is possible for an institution that was originally selected for a loan to become ineligible to use that loan if it were to engage in premature construction. However, other regulatory provisions for the program, principally those contained in 34 CFR 614.52(a), suggest that construction prior to the execution of a loan agreement would not render the entire project ineligible for college housing loan financing, but would merely exclude such construction for reimbursement from college housing loan proceeds.

Based on the Secretary's experience in administering college housing loans, the regulatory provisions which prohibited construction prior to the execution of a loan agreement are being amended to provide the Secretary with greater flexibility in carrying out the program. The amended regulations provide that an educational institution which contracted for construction prior to the execution of a loan agreement is eligible for college housing loan assistance, if the construction is due to catastrophic events. In that case, construction in advance of the Secretary's execution of a loan agreement is permissible as an eligible cost.

A notice of proposed rulemaking was published in the **Federal Register** on November 12, 1985 (50 FR 46675). One comment was received approving of the proposed rule.

Executive Order 12291

These regulations have been reviewed under Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

The program under 34 CFR Part 614 is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Under the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comments on this matter and the Department's own

review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Housing, Loan Programs, Housing and community development.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84–142 College Housing Program)

Dated: April 10, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 614 of Title 34 of the Code of Federal Regulations as follows:

PART 614—COLLEGE HOUSING PROGRAM

1. The authority citation for Part 614 is revising to read as follows:

Authority: 12 U.S.C., 1749–1749d, unless otherwise noted.

2. Section 614.11 is amended by revising paragraph (a) to read as follows:

§ 614.11 Conditions for eligibility of project.

* * * * *

(a) The applicant has not contracted for construction before filing its application.

* * * * *

3. Section 614.52 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

§ 614.52 Additional ineligible costs.

(a) The Secretary excludes from eligible development costs any costs for construction, or for otherwise eligible equipment, if the construction contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster which is related to the construction project.

(b) In cases of a threat to life or limb or a natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

* * * * *

[FR Doc. 86–8645 Filed 4–17–86; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 704

[OPTS–82025; FRL–3003–9]

4,4'-Methylenebis(2-Chloroaniline); Final Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), this rule establishes reporting and recordkeeping requirements for the chemical substance 4,4'-methylenebis(2-chloroaniline) (MBOCA, CAS No. 101–14–4). The substance also is called 4,4'-methylenebis(2-chlorobenzenamine). As a result of this rule, certain persons who propose to manufacture MBOCA in the United States must notify EPA and submit information on the proposed manufacturing process to the Agency. The required notice will provide EPA with an opportunity to evaluate the proposed manner or method of manufacturing MBOCA and, if necessary, initiate regulatory action under TSCA section 6 or 7 to prohibit or limit this activity in order to reduce risk to human health or the environment.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this regulation shall be promulgated for purposes of judicial review at 1 p.m eastern standard time on May 2, 1986. This regulation becomes effective on June 2, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll free: (800–424–9065), In Washington, DC: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Authority

EPA is promulgating this rule pursuant to section 8(a) of TSCA (15 U.S.C. 2601 *et seq.*). Section 8(a) authorizes the Agency to require persons who manufacture, import, or process a chemical substance to submit such reports on the substance as EPA may require. The Agency is authorized to obtain a broad range of data under section 8(a), including information on chemical identity and structure, production, use, exposure, disposal, and health and environmental effects. Small manufacturers, importers, and processors, as defined by EPA, are exempt from section 8(a) reporting and recordkeeping requirements, with certain statutory exceptions.

Persons who intend to import a substance identified in a final section 8(a) rule are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of these requirements is codified at 40 CFR Part 707.

II. Applicability of General Provisions

EPA has codified general reporting provisions for chemical-specific section 8(a) rules at 40 CFR Part 704, Subpart A. These general provisions include a small manufacturer definition and exemption and are applicable to this rule, except as discussed in this preamble and provided in § 704.175.

III. Summary of This Rule

The chemical substance which is the subject of this rule is 4,4'-methylenebis(2-chloroaniline) (CAS No. 101–14–4). The substance also is called 4,4'-methylenebis(2-chlorobenzenamine). For purposes of convenience, the substance will be referred to as MBOCA in this **Federal Register** document.

This final section 8(a) rule requires persons who propose to manufacture MBOCA in the United States to notify EPA of that intent and submit information on their planned manufacturing and on-site processing activities. The rule also requires persons who are manufacturing MBOCA to notify the Agency if they propose to alter their manner or method of manufacturing the substance. These two types of respondents must submit their data to EPA within 30 days of making a firm management decision to commit financial resources to a new or altered manufacturing operation. In addition, this rule requires persons to report if they are manufacturing MBOCA in the United States as of the effective date of this rule; these respondents to the rule must submit their reports to EPA within 30 days of the effective date.

This section 8(a) rule was proposed as a significant new use rule (SNUR) under section 5(a)(2) of TSCA (April 26, 1985; 50 FR 16519). The reporting requirements in this rule are virtually the same as were proposed in the SNUR. Persons

submitting a section 8(a) report under this rule are required to complete certain designated sections of the form codified at 40 CFR Part 720, Appendix A, with regard to their intended production of MBOCA.

EPA received comments on the proposed SNUR from two organizations; both groups approved of EPA's intent to regulate prospective manufacturers of MBOCA. However, one group objected to the development of a SNUR for these companies, on the grounds that the commencement of manufacture of a chemical substance cannot be a significant new use under TSCA section 5(a). The commenter suggested that a section 8(a) rule would be more appropriate for the Agency's particular goal of monitoring prospective manufacturers of MBOCA.

Based solely on the circumstances of the MBOCA case, the Agency is promulgating a section 8(a) rule rather than a SNUR, in order to avoid unnecessary delay in meeting the Agency's primary objectives for the rule: Notification of planned MBOCA manufacturing and on-site processing activities, and an opportunity to evaluate and respond to such plans (see Unit IV of this preamble). The Agency believes that it can effectively meet these objectives for prospective manufacturers of MBOCA through a section 8(a) rule instead of a SNUR.

EPA is promulgating this section 8(a) rule without seeking further public comment. The rule contains virtually identical reporting requirements to the proposed SNUR for MBOCA, and in fact may be less burdensome than the SNUR because the section 8(a) rule will exempt small manufacturers (as defined in 40 CFR Part 704) from reporting. In addition, the Agency's decision to change the SNUR to a section 8(a) rule is based in part on a major comment on the proposed rule, and does not run contrary to other public comments. EPA therefore concludes that, since there are no new substantive issues raised by its decision to promulgate a section 8(a) rule rather than a SNUR for manufacturers of MBOCA, there is no reason to repropose the rule. A notice of withdrawal of the proposed SNUR is published elsewhere in today's issue of the **Federal Register.**

Although importation is included in the TSCA definition of "manufacture," importers of MBOCA are exempted specifically from the requirements of this rule. The rule also does not cover processing and use activities which occur away from a MBOCA manufacturing site, nor does it require information on the method of commercial distribution outside of the plant site. If EPA should choose to take further action to address potential health and environmental risks associated with importation and off-site processing, packaging, and use of MBOCA, the Agency will determine the preferred regulatory approach at that time. (EPA published a Chemical Advisory for MBOCA in June 1985, providing information to the public on the substance's toxic effects, possible routes of exposure, and alternative methods of reducing potential risks. This document is available from the TSCA Assistance Office at the address and telephone numbers listed under **"FOR FURTHER INFORMATION CONTACT."**)

Since EPA is promulgating a section 8(a) rule rather than a SNUR, persons who export MBOCA are no longer subject to the export notification requirements of TSCA section 12(b).

IV. Background Information on MBOCA

A summary of the past production and current end uses of MBOCA, the potential health and environmental effects of the substances, and the likely routes of human exposure to the substance was set forth in the preamble to the proposed SNUR. EPA received no public comments disputing the validity of this information. The Agency classifies the substance as a probable human carcinogen under EPA's proposed risk assessment guidelines (49 FR 46294). MBOCA currently is imported into the United States and is used primarily in the manufacture of polyurethane elastomer products; MBOCA has not been manufactured in the United States since 1979. The substance is readily absorbed into the body via several routes, with industrial workers as the population at greatest potential risk; families of these workers and residents in surrounding communities also could be exposed to the substance.

V. Objectives and Rationale for the Rule

The Agency intends to achieve the following objectives with the reporting requirements of this section 8(a) rule:

1. EPA wants to ensure that it will receive notice of any company's intent to develop a new manufacturing operation for MBOCA or to alter an existing manufacturing operation.

2. The Agency wants to ensure that it will have an opportunity to review and evaluate data submitted in a section 8(a) report on MBOCA manufacturing (generally, the proposed method of manufacture and on-site processing and packaging).

3. EPA wants to ensure that it will be able to contact prospective manufacturers of MBOCA, if necessary, so that the Agency can work with these companies to reduce the likelihood of exposure to MBOCA during the manufacturing process.

4. The Agency wants to ensure that it will be able to control MBOCA manufacturing activities that EPA believes will present an unreasonable risk to human health or the environment (through action under TSCA section 6 or 7).

There is no current exposure risk posed by MBOCA manufacture in the United States because the substance is not being produced in this country at this time. However, significant quantities of imported MBOCA are used in the United States as an intermediate in the manufacture of polyurethane plastics. In view of the substantial size of the market for MBOCA in the United States and the fact that there is no Federal restriction on manufacture of the substance at present, it is possible that one or more companies may commence manufacture of MBOCA in this country.

A resumption of MBOCA manufacturing in the United States could significantly increase the potential for release of MBOCA and subsequent human exposure to the substance. Because MBOCA is a probable human carcinogen, the Agency wishes to ensure that any future manner or method of manufacturing the substance in the United States will restrict the release of MBOCA dust into the workplace and the environment. Previous manufacture of the substance at a plant site in Adrian, Michigan resulted in the release of a considerable amount of MBOCA, both within the site and into the surrounding environment, with resulting human exposure to the substance. EPA wishes to avoid a recurrence of this type of incident. A company's intent to begin manufacturing MBOCA in the United States would present EPA with a significant new exposure concern that justifies the promulgation of this section 8(a) rule.

This rule ensures that EPA will receive timely notification of any company's intent to manufacture MBOCA, and enables EPA to conduct an assessment of the health and environmental risks associated with the manufacturing and related on-site processing of the substance. Upon receipt of a section 8(a) report under this rule, the Agency will have an opportunity to work with the respondent, if necessary, to minimize exposure risks associated with the planned manufacturing process. The Agency also has follow-up regulatory options available under TSCA section 6

or 7 to limit or control unreasonable risks to human health or the environment, thereby reducing the possibility that such risks will occur.

One commenter on the proposed rule questioned the exclusion of importers from the rule, and suggested that the Agency require importers of MBOCA to submit a notice if their volume of imported MBOCA increases above current base line levels. EPA did not include importers within the scope of the proposed SNUR because of the difficulties involved in developing a notice trigger that would reflect the fact that the importation of MBOCA currently is an ongoing use. Although this final section 8(a) rule could have been structured to obtain data on currently ongoing uses of MBOCA such as importation of the substance, the Agency has chosen not to do so for a number of reasons.

First, importers have received notice of the suspected health hazards of MBOCA through EPA's chemical advisory on the substance. Second, the Agency currently is considering a request from the National Institute for Occupational Safety and Health (NIOSH) to obtain data from importers and processors of MBOCA under the proposed section 8(a) Comprehensive Assessment Information Rule (CAIR) now being developed by EPA. If such reporting requirements are established in CAIR, they would be designed so as not to duplicate the requirements of this rule. Although the data collected on MBOCA under CAIR would be for use by NIOSH, EPA would have access to the collected data. (The Agency is not requiring reporting by importers and processors in the current rule because this rule was proposed as a SNUR, which could not require reporting on ongoing activities such as importation and processing of MBOCA; the rule is being promulgated as a section 8(a) rule without reproposal, and therefore can not now include importers and processors.)

Even if EPA does not obtain information on importers under CAIR, the Agency would be able to identify such firms (without duplicative reporting) by means of a final rule now under development to partially udpate the TSCA Chemical Substances Inventory.

VI. Applicability of the Rule to Manufacturing Which Has Occurred Before Promulgation of the Final Rule

EPA stated in the proposed SNUR that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the NSUR rather than the date the final rule is promulgated. This interpretation of TSCA section 5 prevents persons from defeating a SNUR by intiating a proposed significant new use before the rule becomes final. EPA therefore designated the manufacture of MBOCA in the United States as a significant new use of that substance as of the proposal date of the SNUR (April 26, 1985). According to the proposed SNUR, persons who were manufacturing MBOCA in the United States when the final rule was promulgated would be subject to SNUR notification requirements as of the rule's effective date.

This final section 8(a) rule continues that notification requirement; any person who is manufacturing MBOCA in the United States as of the effective date of this rule is required to submit information on their manufacturing activities to EPA. This section 8(a) reporting requirement is consistent with EPA's objective of receiving notice of all MBOCA manufacturing activities in the United States, in order to evaluate the potential for release of and exposure to this probable human carcinogen.

EPA also included language in the proposed SNUR which would allow companies the possibility of complying with the SNUR before the rule was promulgated. One company (Bofors Nobel, Inc.) did make use of this proposed advance compliance exemption, and was judged by the Agency to have met all of the conditions of advance compliance, as specified in the proposed rule. EPA has decided that, for purposes of this final section 8(a) rule, Bofors Nobel has met the necessary reporting requirements and need not submit a new report to EPA; the company has been notified directly of this decision. However, in the event that Bofors Nobel proceeds with the manufacture of MBOCA in the United States and does so in a way different from the process described in their SNUR notice, they will be subject to this section 8(a) rule just as any other firm would be (see § 704.175(b)(3) of the final rule).

VII. Submission of Additional Data

This final section 8(a) rule does not require persons to develop any particular test data before submitting a notice and information to the Agency. Rather, persons subject to the rule are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health and environmental risks that may be posed by the manufacture of MBOCA, EPA encourages respondents to this rule to provide the Agency with any relevant data on MBOCA that they may wish to develop. Such data may include test data, or data concerning human exposure, environmental release, or intended engineering controls and personal protective equipment. Generally, section 8(a) reports submitted with relevant supplemental data will improve EPA's ability to make a reasoned evaluation of the health and environmental effects of MBOCA.

Persons choosing to develop test data voluntarily in response to this section 8(a) rule should provide data that conform with the TSCA Good Laboratory Practice Standards, which are codified at 40 CFR Part 792. EPA encourages persons who intend to conduct testing of MBOCA to consult with the Agency before selecting a protocol for testing the substance. EPA also encourages persons submitting section 8(a) data on MBOCA to provide information on the potential benefits of the intended activities involving the substance, plus information on the risks posed by those activities compared to risks posed by the current use of imported MBOCA or potential substitutes.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing section 8(a) reporting requirements for manufacturers of MBOCA. This economic analysis is contained in the public record for this rule (OPTS–82025). The results of EPA's analysis for the final section 8(a) rule are similar to those developed to support the proposed SNUR. The rule will have minimal regulatory impact on the chemical industry.

EPA estimates that the cost for a single manufacturer to submit a section 8(a) report in response to this rule will range from $1,400 to $8,000. The Agency is not able to determine the total cost of industry compliance with the section 8(a) reporting requirements, because it is not possible to estimate accurately the number of companies that will submit section 8(a) reports in response to the rule; a major part of the rule is forward-looking, with reporting requirements that will be triggered by events that are not currently taking place. However, in view of the estimated cost-per-report figures, and the likely amount of current and future manufacture of MBOCA in the United States, EPA expects the total compliance cost to industry to be low. In addition, the compliance burden may be further reduced through the small manufacturer exemption that is applicable to this rule.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–82025) which is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, E–107, 401 M St., SW., Washington, DC 20460. The record includes basic information considered by the Agency in developing this rule. The record includes the following items:

1. Office of Toxic Substances Priority Review Level–1 Document, Risk Assessment on MBOCA, U.S.E.P.A., 1982.
2. Economic Analysis of Proposed Significant New Use Rule for 4,4'-Methylenebis(2-chlorobenzenamine) (MBOCA), Economics and Technology Division, U.S.E.P.A., 1984.
3. The proposed rule (April 26, 1985, 50 FR 16519).
4. Public comments on the proposed rule.
5. Economic Analysis of Final Section 8(a) Rule for 4,4'-Methylenebis(2-chloroaniline) (MBOCA), Economics and Technology Division, U.S.E.P.A, 1985.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis . EPA has determined that this section 8(a) rule is not a "major " rule because it will not have an impact on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. EPA believes that, because of the nature of the rule and the substance involved, there will be few section 8(a) reports submitted, and the industry-wide cost of complying with this rule therefore is expected to be low.

Furthermore, while the expense of submitting data to EPA and the uncertainty of possible Agency regulation may discourage some innovation, that impact will be limited because such factors are unlikely to discourage innovation that has high potential value. The rule may in fact encourage potential respondents to develop new methods of controlling MBOCA release and exposure, or to develop safe substitutes for the substance.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this rule are likely to be small businesses. However, "small" manufacturers (as defined in 40 CFR 712.25) will be exempt from the reporting requirements of this rule. In addition, EPA believes that the number of respondents to this rule will be small; therefore, the number of respondent firms that approach but do not meet the small manufacturer exemption standards will be minimal.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule, under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has assigned control number 2070–0067 to the rule.

List of Subjects in 40 CFR Part 704

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: April 9, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 704—[AMENDED]

Therefore, Part 704 of Chapter I of Title 40 is amended as follows:

1. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. By adding § 704.175 to Subpart B, to read as follows:

§ 704.175 4,4'-methylenebis(2-chloroaniline) (MBOCA).

(a) *Substance subject to reporting.* The chemical substance 4,4'-methylenebis(2-chloroaniline) (CAS No. 101–14–4) is subject to reporting under this section. The substance also is identified as 4,4'-methylenebis(2-chlorobenzenamine) and MBOCA.

(b) *Persons who must report.* Except as provided in paragraph (c) of this section, the following persons are subject to this rule.

(1) Persons who propose to manufacture MBOCA in the United States on or after June 2, 1986.

(2) Persons who are manufacturing MBOCA in the United States as of June 2, 1986.

(3) Persons manufacturing MBOCA in the United States on or after June 2, 1986 who propose to change their manner or method of manufacturing the substance from a manner or method of manufacturing that previously was reported under this section.

(c) *Persons not subject to this rule.* The following persons are exempt from the reporting requirements of this section:

(1) Persons who import MBOCA into the customs territory of the United States and do not otherwise manufacture the substance in the United States.

(2) Persons who complied with the requirements of this section prior to June 2, 1986 and received written notification of compliance from EPA.

(d) *What information to report.* Persons who are subject to this rule as described in paragraph (b) of this section must report information to EPA by completing the following Parts of the notice form contained in Appendix A to Part 720 of this chapter: Parts I.A., I.B., I.C.1., I.C.3., and II.A.; also, Part III as appropriate. Persons subject to the requirements of this section also must submit a narrative description of any processing and packaging of MBOCA that occurs at the manufacturing plant site, including the number of workers potentially exposed to MBOCA during on-site processing and packaging of MBOCA and a description of any personal protective equipment and/or engineering controls that would be used to prevent release of and exposure to MBOCA during on-site processing and packaging. Persons subject to the requirements of this section are not required to submit information on processing or use of MBOCA away from the manufacturing plant site. Respondents to this rule shall report all information that is known to or reasonably ascertainable by the person reporting.

(e) *When to report.* (1) Persons specified in paragraph (b)(1) of this section must report by July 2, 1986 or within 30 days after making a firm management decision to commit financial resources for the manufacture of MBOCA, whichever is later in time.

(2) Persons specified in paragraph (b)(2) of this section must report by July 2, 1986.

(3) Persons specified in paragraph (b)(3) of this section must report within 30 days of making a firm management decision to commit financial resources to change their manner or method of manufacturing the substance from a manner or method of manufacturing that previously was reported under this section.

(f) *Where to send reports.* Reports must be submitted by certified mail to the United States Environmental Protection Agency, Document Processing Center, P.O. Box 2070,

Rockville, MD 20852. ATTN: MBOCA Notification.

(Approved by the Office of Management and Budget under Control Number 2070–0067.)

[FR Doc. 86–8636 Filed 4–17–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[BERC–352–F]

Medicaid Program; Fire Safety Standards for ICFs/MR

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the fire safety standards for intermediate care facilities for the mentally retarded. It updates the standards to incorporate the National Fire Protection Association's 1985 edition of the Life Safety Code, which will replace the 1981 edition currently required. The incorporation of the new edition of the Life Safety Code is intended to ensure that Medicaid providers and recipients have the benefit of the most current fire protection standards.

DATES: These regulations are effective May 19, 1986. The incorporation by reference of the 1985 edition of the Life Safety Code in these regulations is approved by the Director of the Federal Register and is effective May 19, 1986.

FOR FURTHER INFORMATION CONTACT: Samuel Kidder, (301) 597–5909.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(d) of the Social Security Act authorizes optional Medicaid coverage for services in intermediate care facilities for the mentally retarded (ICFs/MR). These are facilities that provide health or rehabilitative services to mentally retarded individuals.

In order to participate in the Medicaid program, an ICF/MR must have a provider agreement with the State Medicaid agency. To enter into a provider agreement, an ICF/MR must first be certified by a State survey agency as complying with certain health and safety requirements. These requirements are referred to as standards and are set forth in the regulations at 42 CFR Part 442, Subpart G—Standards for Intermediate Care Facilities for the Mentally Retarded.

Among these standards are the current ICF/MR standards on fire protection contained in regulations at 42 CFR 442.507 through 442.509. They provide two ways in which a facility can be surveyed for fire safety. First, a facility may be surveyed under the Health Care Occupancies Chapters (Chapter 12 or 13) of the 1981 edition of the Life Safety Code (LSC) of the National Fire Protection Association (NFPA).

Second, if the facility has 15 or fewer beds, the regulations at 42 CFR 442.508 permit the State survey agency to apply the Lodging and Rooming Home section of the Residential Occupancies requirements of the 1981 LSC. This section relies principally on "alarms and exiting" as opposed to "protection in place" and, as such, imposes less stringent physical plant requirements than Chapter 12 or 13 of the LSC. However, under current regulations, small ICF/MR may only qualify for these less stringent requirements if its clients are ambulatory, capable of self preservation, and receiving active treatment. The current regulations define ambulatory as "able to walk without assistance". We have found this definition to be too rigid because it does not take into consideration than many clients require assistance devices (for example, wheelchairs), but nevertheless, can quickly evacuate the premises under emergency conditions.

Thus, on November 5, 1985 we published a proposed rule that would require ICFs/MR to meet the provisions of the 1985 edition of the LSC rather than the 1981 edition currently required. The 1985 edition contains new provisions for residential board and care occupancies (Chapter 21). These new provisions require small residential board and care occupancies to meet one of three levels of physical plant requirements. The level of physical plant requirements that a facility must meet depends upon an objective measure of the ability of clients and staff to evacuate the building. We believe Chapter 21 will solve many of the enforcement problems of existing regulations because it does not rely on subjective judgments about a client's ambulatory status.

The provisions of the proposed rule, the comments we received, and the changes that we made in response to those comments are discussed below.

II. Provisions of the Proposed Regulations

We proposed to amend the regulations on fire protection by incorporating the existing standards relating to fire safety (§§ 442.507–442.509) in one new standard § 442.508, "Fire protection". In the proposed § 442.508, we specified that facilities meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required. The new Residential Board and Care Occupancies Chapter (Chapter 21) of the 1985 LSC is designed to assure client safety and provide reasonable alternatives for facility compliance by taking into consideration the characteristics of the staff and the clients, as well as the fire protection features of the structure.

Our proposal specified that a facility must meet the appropriate provisions of either the Health Care Occupancies Chapter or chapter 21 of the 1985 LSC.

Note.—In the proposal, we incorrectly referred to the Health Care Occupancies Chapter. We should have referred to the Health Care Occupancies Chapters because there are two chapters that could apply (Chapter 12 or 13).

Since the proposed fire safety standards would no longer refer to the following terms in determining a facility's compliance with the LSC, we proposed to delete these definitions from § 442.401: "Ambulatory", "Mobile nonambulatory", "Nonambulatory" and "Nonmobile".

We proposed to retain the current waiver provisions for specific LSC requirements for facilities subject to either Chapter 12 or 13 of the LSC. These provisions permit a State agency to grant a waiver for specific provisions of the LSC if the waiver would not adversely affect the health and safety of clients and the LSC requirement would cause unreasonable hardship for the facility. We also proposed to retain provisions for the acceptance of a State's fire and safety code in place of the LSC for all large facilities and for small facilities meeting the LSC definition of a health care occupancy.

We proposed to allow facilities that previously met and continue to meet Chapter 12 or 13 of the 1967 or the 1981 edition of the LSC to remain in compliance. That is, such facilities would not be required, but may choose, to meet the 1985 edition.

In the proposed rule, we noted that the NFPA no longer uses a 15 bed, but rather a 16 bed, cut-off point for distinguishing between small and large facilities. Therefore, the proposed regulation referred to facilities having "16 or fewer beds" or "more than 16 beds" in accordance with the new NFPA requirements.

Finally, the proposed rule specified that an ICF/MR that has 16 or fewer beds and that is surveyed under Chapter

21 must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index (EDI), which is a part of the 1985 LSC. The EDI is an objective evaluation of the evacuation capability of staff and clients and is used by surveyors to determine which of three physical plant requirements the facility must meet. We believe that the application of the EDI will result in greater uniformity and fairness in applying fire safety standards.

III. Discussion of Comments

In response to the proposed rule, we received thirty-five timely items of correspondence from individuals, State governmental agenices, and State and national organizations representing the mentally retarded and developmentally disabled. All but one commenter endorsed the adoption of the 1985 LSC, which includes the new Chapter 21. The specific comments recommending changes and our responses to those comments follow.

A. Gradual Implementation of the 1985 LSC

Comment: Fifteen commenters requested that we phase-in the provisions of Chapter 21 of the 1985 LSC because facilities will require time to obtain financing and building approvals for the capital improvements that will be necessary The requested phase-in periods ranged from one to three years.

Response: Although we understand that in some cases there may be circumstances that will present problems, we think it is unwise to provide a general phase-in for all facilities. Therefore, we have not made this change.

We believe that Chapter 21 provides flexibility in that one of three levels of physical plant requirements is required, depending on the evacuation capability of clients and staff. Consequently, Chapter 21 may require few, if any, physical plant improvements.

Furthermore, the Fire Safety and Evaluation System for Board and Care Facilities. (FSES/BC) provides an additional option to facilities. The FSES/BC is included in the 1985 LSC and can be used if a building does not meet the specific requirements of Chapter 21. Under the FSES/BC, a surveyor assigns numerical values to fire safety features and either passes or fails the building on the basis of a comprehensive score. The FSES/BC takes into account equivalency features that may not be addressed in Chapter 21. For example, the absence of self-closing doors (which are necessary to prevent smoke from spreading) would be more than compensated for under the FSES/BC by doors that open from the bedrooms directly to the outside.

State agency survey schedules also will allow time for facilities to meet the new requirements, since all facilities will not be surveyed as of the effective date of these regulations. Moreover, a facility that fails to meet all program requirements could still participate in the Medicaid program if—

- It submits a correction plan acceptable to the State survey agency as specified in §442.13(c); and
- Deficiencies, individually or in combination, do not jeopardize the clients health and safety, nor seriously limit the facility's capacity to give adequate care (§ 442.105).

B. Self-closing Doors

Comment: Four commenters discussed the specific requirement of Chapter 21 of the LSC that a facility have doors that are either automatically-closing upon the detection of smoke or self-closing. An automatically-closing door is one that closes when activated by a smoke detection system. A self-closing door is one that, when opened, will close by itself when released. Chapter 21 requires, regardless of the evacuation capability of clients and staff, a facility to separate all sleeping rooms from escape route corridors with walls and doors that are smoke resistant. Unless a building is sprinklered, these separating doors must be either automatically-closing upon the detection of smoke or self-closing. The commenters objected to the requirement for self-closing doors because many clients are frail and cannot open self-closing doors and because these doors detract from a home-like environment. Commenters also stated that the facility could not afford doors that automatically close upon smoke detection. One of the commenters suggested that we permit waivers of the specific provisions of Chapter 21 as a solution to the problem of these doors.

Response: We understand the practical problems that the requirement for these doors may present to clients and facilities, but the protection of clients from smoke inhalation is of critical importance, as determined by the NFPA. The protection that self-closing doors provides far outweighs the minimal expense involved. If a facility finds this requirement burdensome, it may find that an equivalent feature, such as non-combustible construction, may allow it to pass the FSES/BC.

C. Waivers

Comment: Many of the commenters objected to the provision that would allow the State survey agency to grant waivers of specific provisions of the 1985 LSC for facilities surveyed under Chapter 12 or 13 (§ 442.508(b)(1) of the proposal) but not for those surveyed under the new Chapter 21. Twenty-one commenters maintained that the flexibility provided by waivers should be allowed for all facilities regardless of what chapter of the LSC is applied.

Response: We have carefully examined the issue of providing waivers for facilities surveyed under Chapter 21 and have decided not to include the waiver provision in these regulations. We believe that the level of safety required by Chapter 21 and the FSES/BC is appropriate for the mixed occupancies experienced in ICFs/MR. The NFPA has adopted these standards with input from a wide range of fire safety experts and we do not consider it appropriate to potentially dilute those standards with a waiver provision.

We believe that we have reached a reasonable balance between client safety and provider considerations for the following reasons:

- Chapter 21 inherently provides flexibility for the provider in that it allows three different levels of physical plant requirements depending on the ability of clients and staff to evacuate the building.
- The FSES/BC provides a further option that may allow a facility to pass fire safety requirements on the basis of equivalent fire protection features.
- Chapter 21 has fewer requirements than either Chapters 12 or 13. Consequently, it already represents an attempt to limit standards to those absolutely necessary and a waiver provision has a potential for diluting them.
- Chapter 21 is a new fire protection standard for a unique occupancy. Although it has been tested, we believe that it is prudent to gain broad experience with it before deciding that it is in need of a waiver provision.
- If clients' health and safety would not be seriously jeopardized, then existing survey and certification regulations could allow the facility a reasonable period of time to correct these deficiencies while the facility continues to serve clients.

D. Application of Different Chapters of the 1985 LSC to Different Buildings

Comment: Twelve commenters requested that we extend the provisions of the proposed §§ 442.508(b)(3) and 442.508(c) to small facilities surveyed under Chapter 21. Under these provisions, a large facility having multiple buildings is not required to meet one particular chapter of the LSC

but could meet different chapters depending on the occupancy of each building.

Response: We inadvertently omitted small facilities surveyed under Chapter 21 from this provision. Therefore, we have amended the regulations at § 442.508(a)(2) to apply this provision to all facilities. Thus, for small facilities surveyed under Chapter 21, as well as for other facilities, the State survey agency may apply different chapters of the LSC to different buildings or parts of buildings as permitted by the LSC.

E. State Codes

Comment: Eleven commenters suggested that we allow a State's fire safety code to be used in place of the LSC in all facilities. Current regulations allow, and the proposed regulations would allow, use of a State fire safety code if the Secretary finds that the State code adequately protects clients. However, the proposed regulations at § 442.508(b)(2) would have excluded small facilities surveyed under Chapter 21 from the provision allowing the use of a State's code.

Response: As stated in our proposal, we did not provide for the acceptance of a State fire and safety code for small facilities surveyed under Chapter 21 because we believe we need experience in the application of Chapter 21 in these facilities before general application by the States is appropriate. We provided for the acceptance of a State's code for large facilities surveyed under Chapter 21 because, for the most part, these facilities will have to meet requirements contained in either Chapter 12 or 13. This is because Chapter 21, as applied to large facilities, incorporates many of the requirements of Chapters 12 and 13 and many States have adequate experience with these requirements. For the reasons discussed above and because the commenters did not provide a rationale for their views, we have made no change based on these comments.

F. Acceptance of Previous Editions of the LSC

Comment: Twelve commenters objected to our provision (proposed § 442.508(b)(4)) that would allow only facilities surveyed under Chapter 12 or 13 to remain in the program if they met and continue to meet a previous edition of the LSC. The commenters believe that this "grandfather" provision should be extended to facilities surveyed under Chapter 21 as well.

Response: We took this approach because there is no previous LSC chapter that specifically addresses ICF/MR occupancy. Thus, there are no earlier standards to which a "grandfather" clause could apply. If we wanted to allow grandfathering, we would have to retain existing provisions that require clients to be ambulatory and capable of self-preservation. However, these provisions are no longer considered adequate to protect health and safety. That is why the NFPA adopted specific standards for residential board and care occupancies as part of the LSC. We have made no change based on these comments.

G. Evacuation Difficulty Index

Comment: One commenter objected to the exclusive use of the Evacuation Difficulty Index (EDI) and requested that we allow timed drills in addition to the EDI.

Response: We have made no change to the regulations based on this comment. A State survey agency must use the EDI exclusively to determine what physical plant requirements a facility must meet. We believe the EDI to be the only objective and effective method of determining the appropriate level of fire protection requirements for an ICF/MR.

Comment: Another commenter objected to the use of fire marshals to assess the evacuation difficulty of clients through the EDI. This commenter asserted that fire marshals are not sufficiently knowledgeable in the areas of mental retardation and developmental disabilities to complete the EDI analysis accurately and, as a consequence, believes that fire marshals would err on the side of safety and require artificially high physical plant requirements.

Response: While we will not preclude the use of fire marshals, we do plan to instruct State survey agencies on methods of completing the EDI to assure that qualified individuals make these important client and staff assessments.

Comment: Because the EDI will be determined annually, one commenter was concerned that changes in client health, mental status, or mix would increase the fire safety needs between annual surveys. The commenter believed that these types of changes could jeopardize the health and safety of clients.

Response: We discussed this potential problem with individuals experienced with the EDI. They informed us that, as a practical matter, changes in client mix or status do not change the EDI score significantly enough to change the facility from one category of physical plant requirement to another. If this should happen, the facility could always increase staff to compensate for increased client evacuation difficulty. Of course, should the next survey result in the facility being placed in a new category, it would become subjected to the requirements of that category at that time.

IV. Summary of Changes

We have adopted the provisions set forth in the proposed rule with the exception of the changes noted below. In order to make these changes, we have reordered the contents of our proposed § 442.508. The summary of the changes follows:

A. Reference to Health Care Occupancies Chapter

In the proposed rule, we referred to the Health Care Occupancies Chapter in the singular. However, the NFPA has two chapters that contain health care occupancies provisions. One is for new facilities (Chapter 12) and one is for existing facilities (Chapter 13). Therefore, we have modified the regulations at § 442.508(a)(1) so that the reference is in the plural.

B. Incorporation by Reference

We have made changes to the information (contained in the footnote to the proposed § 442.508(a)) that concerns the incorporation by reference of the 1985 LSC. To more clearly identify the edition of the LSC that we are incorporating by reference, we have added the publication date and identification number. We also have included language that cites the authority in law and regulations for the Director of the Office of the Federal Register to grant approval of an incorporation by reference.

C. Application of Different Chapters of the LSC

We have revised the regulations at § 442.508(a)(2) to include small facilities surveyed under Chapter 21 among those facilities for which the State survey agency may apply different chapter of the LSC to different buildings or parts of buildings as permitted by the LSC.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to meet criteria for a "major rule". A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment,

productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although we cannot develop a quantitative estimate, we do not believe that the economic impact of this regulation would exceed $100 million or meet the other thresholds specified in the Executive Order. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. We consider all ICFs/MR to be small entities for purposes of the RFA. Because this proposal may have a significant economic impact on a substantial number of ICFs/MR, we have prepared the following analysis.

As of January 1986, there were about 3,080 certified ICFs/MR ranging in size from 4 to more than 1500 beds, as follows:

Number of beds	Number of ICFs/MR
Less than 4	0
4 to 16	2,260
17 to 50	304
51 to 100	222
101 to 300	170
301 to 500	50
501 to 750	44
751 and over	30
Total	3,080

Public IDFs/MR comprise about 31 percent of certified ICFs/MR and private facilities represent the remaining 69 percent

In the November 5, 1985 Federal Register, we stated that the proposal might have a significant economic impact on a substantial number of ICFs/MR, and we prepared an analysis under the RFA. We stated that we could not estimate quantitatively the potential impact of the proposed rule but that the proposal intended to ensure a high level of fire safety in ICFs/MR, while reducing the costs of protection.

Under the current regulations, some facilities may have had the physical capacity to house 16 clients but elected not to use their full capacity in order to be certified under the Lodging and Rooming Home section of the LSC. Under these final rules, facilites may fill their 16th bed and be surveyed under Chapter 21. Therefore, the facilities will be able to serve more clients without applying all the costly features required under Chapter 12 or 13. These facilities may also benefit from an increase in revenue by filling the additional beds.

We anticipate that the adoption of Chapter 21 of the LSC will enable facilities to serve more clients in a wider variety of settings with reduced capital expenditures for fire protection features. Since Chapter 21 of the LSC provides for various methods of achieving needed fire protection features, facilities will be able to tailor fire protection capital improvements to the specific needs of clients and staff.

This final rule is designed to be more flexible than current procedures. We believe there is no undue or inappropriate burden placed on the public within the meaning of the RFA.

List of Subjects in 42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Incorporation by reference, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 442 is amended as follows:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

1. In Part 442, the authority citation continues to read as follows, and the table of contents for Subpart G is amended by removing §§ 442.507 and 442.509, and by revising the title of § 442.508 to read as follows:

Subpart G—Standards for Intermediate Care Facilities for the Mentally Retarded

Sec.

* * * * *

442.508 Fire protection

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

§ 442.401 [Amended]

2. In § 442.401, "Definitions", the definitions of the terms "Ambulatory", "Mobile nonambulatory", "Nonambulatory", and "Nonmobile" are removed.

§ 442.507 [Removed]

3. Section 442.507 is removed.

4. Section 442.508 is revised to read as follows:

§ 442.508 Fire protection.

(a) *General.* (1) Except as specified in paragraph (b) of this section, the facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the Life Safety Code (LSC) of the National Fire Protection Association, 1985 edition, which is incorporated by reference.[1]

(2) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC.

(3) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds, must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F).

(b) *Exceptions.* (1) For facilities that meet the LSC definition of a health care occupancy:

(i) The State survey agency may waive, for a period it considers appropriate, specific provisions of the LSC if—

(A) The waiver would not adversely affect the health and safety of the clients; and

(B) Rigid application of specific provisions would result in an unreasonable hardship for the facility.

(ii) The State survey agency may apply the State's fire and safety code instead of the LSC if the Secretary finds that the State has a code imposed by State law that adequately protects a facility's clients.

(iii) Compliance on November 26, 1982 with the 1967 edition of the LSC or compliance on [publication date of final rules] with the 1981 edition of the LSC, with or without waivers, is considered to be compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

[1] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA 101) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269.

If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the Federal Register.

(2) For facilities that meet the LSC definition of a residential board and care occupancy and that have more than 16 beds, the State survey agency may apply the State's fire and safety code as specified in paragraph (b)(1)(ii) of this section.

§ 442.509 [Removed]

5. Section 442.509 is removed.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 2, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: April 2, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-8647 Filed 4-17-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3480

[Circular No. 2567]

Coal Exploration and Mining Operations Rules; Logical Mining Units

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: Section 3487.1(a) of Title 43 of the Code of Federal Regulations sets the general requirements concerning approval of logical mining units for Federal coal. This final rulemaking clarifies the discretionary authority of the Secretary of the Interior in establishing the effective date of approval of a logical mining unit.

EFFECTIVE DATE: November 1, 1985.

ADDRESS: Any inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240

FOR FURTHER INFORMATION CONTACT:

Paul W. Politzer, (202) 343-7722;

or

Allen B. Agnew, (202) 343-7753.

SUPPLEMENTARY INFORMATION: An interim final rulemaking concerning approval of logical mining units for Federal coal was published in the **Federal Register** on October 2, 1985, with a 30-day comment period. During the comment period, two comments were received, one from an industry representative and one from an industry association. The comments were carefully reviewed and no changes have been made in this final rulemaking as result of the comments.

Section 5 of the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092) added paragraph 2(d) to the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 202a). This amendment authorizes the Secretary of the Interior, upon determining that the maximum economic recovery of Federal coal will be achieved, to approve the consolidation of Federal coal leases into a logical mining unit. A logical mining unit is an area of lands in which the coal may be developed in an efficient, economic and orderly manner as a unit, with due regard to conservation of the coal and other resources. Federal coal leases issued prior to the enactment of the Federal Coal Leasing Amendments Act can be included in a logical mining unit only if all of the lessees whose coal leases are included in the approved logical mining unit give their approval. In addition, there is a requirement that a public hearing be held prior to the approval of the logical mining unit if requested by a person having a direct interest that is or may be adversely affected by the formation of the logical mining unit. An approved logical mining unit may include one or more Federal coal leases, as well as non-Federal coal; however, all lands in a logical mining unit must be under the effective control of a single operator, must be able to be developed and operated as a single operation and be contiguous. Still another limitation on the approval of a logical mining unit is that no unit can be approved if the total acreage in the unit exceeds 25,000 acres. In addition to these statutory requirements, § 3482.1 (b) and (c) of the existing regulations require the resource recovery and protection plan for a logical mining unit to show that the entire unit's recoverable coal reserves will be mined out within 40 years.

A logical mining unit cannot be approved prior to the completion of the public participation procedures provided for in § 3487.1(a). However, § 3487.1(a) of the existing regulations does not state with certainty the date the logical mining unit is, or may be, made effective. The need for establishing a definitive date when a logical mining unit becomes effective was suggested in the public comments received on the draft *LMU Application and Processing Guidelines*, which was published in the **Federal Register** on April 11, 1985 (50 FR 14303).

Section 2(d) of the Mineral Leasing Act does not prescribe an effective date for a logical mining unit. The Department of the Interior has determined that a logical mining unit may be effective only after receipt by the authorized officer of an application for approval of a logical mining unit. Further, the effective date should not occur until after the date the Bureau of Land Management approves the application. Therefore, the Department of the Interior issued an interim final rulemaking that resolved the effective date issue by allowing the authorized officer to establish the effective date of a logical mining unit which is approved in accordance with the provisions of Subpart 3487 at any time between the date of receipt of the application and the approval date, after consultation with the applicant. If the authorized officer proposes to make the logical mining unit effective on a date earlier than the date of approval of the application, the proposed effective date will be published in the notice of proposed decision and be subject to public comment.

Both of the Comments on the interim final rulemaking supported the concept of the interim final rulemaking, with one supporting it without change. The second comment objected to the latitude given the authorized officer in the interim final rulemaking in establishing the effective date of approval "within the time frame bounded by (1) the date that the authorized officer receives the application, and (2) the date the authorized officer approves the application." This comment went on to express the view that "this time frame would jeopardize the applicant's Section 3 position for those pre-FCLAA leases to be included within an LMU if the authorized officer delays the approval process. Consequently, this delay may defer the effective date of LMU approval to be established after August 4, 1986." It should be noted that the effective date of the "section 3 position" referred to in the comment has been extended to December 31, 1986, by the Act of December 19, 1985 (Pub. L. 99-190). In order to avoid this potential problem, the comment recommended that the effective date of approval of a logical mining unit be established as the date the application is received by the authorized officer upon the condition that the application is subsequently approved.

The interim final rulemaking and this final rulemaking allow flexibility to the authorized officer in establishing the effective date of approval for a logical mining unit. The rulemaking gives the authorized officer authority to consult with a logical mining unit applicant during review of the logical mining unit

application and establish an effective date of approval for a logical mining unit that is acceptable to all parties. The date of approval would be based on the results of the consultation process during the logical mining unit application review process as set forth in the *Guidelines for Implementation of section 2(d) of the Act of February 25, 1920, as amended (30 U.S.C. 202a)* published in the Federal Register on August 29, 1985 (50 FR 35145). During the consultation phase, the logical mining unit applicant may propose a desired effective date to the authorized officer, giving the reasons for wanting that date. In addition, the logical mining unit may be formed for purposes other than satisfying the requirements of "section 3" and in such instances an automatic, retroactive, effective date could be detrimental to a logical mining unit applicant. For these reasons, the final rulemaking has not adopted the recommended change.

The primary authors of this final rulemaking are William C. Stringer and Allen B. Agnew, Division of Solid Mineral Operations, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management and other field and Washington Office personnel, Bureau of Land Management and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

In the Determination of Effects dated August 23, 1985, it was determined that the number of cases to which this final rulemaking might apply per year, and the likely economic impact per mine, are certain not to exceed the economic threshold of Executive Order 12291. With respect to impacts on small entities, the final rulemaking could only have the beneficial effect of avoiding unnecessary and inefficient deviations from proper mining practices an operator might otherwise undertake in order to comply, lease-by-lease, with lease production requirements. Thus, there will be a minor cost savings to any operator, large or small, to whom the final rulemaking may apply.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3480

Administrative practice and procedure, Coal, Government contracts, Intergovernment relations, Mineral royalties, Mines, Public lands—mineral resources, Reporting requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), Revised Statute 441 (43 U.S.C. 1457), The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and the Freedom of Information Act (5 U.S.C. 552), Part 3480, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: March 27, 1986.

James E. Cason,

Acting Assistant Secretary of the Interior.

PART 3480—[AMENDED]

1. The authority citation for Part 3480 continues to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) and the Freedom of Information Act (5 U.S.C. 552).

2. Section 3487.1(a) is revised to read:

§ 3487.1 Logical mining units.

(a) An LMU shall become effective only upon approval of the authorized officer. The effective date for an LMU may be established by the authorized officer between the date that the authorized officer receives an application for LMU approval and the date the authorized officer approves the LMU. The effective date of the LMU approval shall be determined by the authorized officer in consultation with the LMU applicant. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with paragraph (g) of this section. An LMU may be diminished by creation of other separate Federal leases or LMU's in accordance with paragraph (g) of this section.

* * * * *

[FR Doc. 86–8629 Filed 4–17–86; 8:45 am]
BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 86–152]

Delegations of Authority to the Chief, Common Carrier Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 0.291(b) of the Commission's Rules, delegating authority to its Common Carrier Bureau to act on routine requests, filed pursuant to the Freedom of Information Act (FOIA), for inspection of records which may fall within Section 220(f) of the Communications Act.

This action is taken by the Commission to remove any doubt or uncertainty whether its Common Carrier Bureau may act on all routine FOIA requests concerning records in the Bureau's custody.

This action eliminates any need to have the Commission itself act, at least initially, on FOIA requests that present no novel questions of fact, law or policy and which can be resolved under outstanding precedents and guidelines.

EFFECTIVE DATE: April 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Adrien Auger, Enforcement Division, Common Carrier Bureau, (202) 632–4887.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Authority delegation (Government agencies).

Order

In the matter of Amendment of § 0.291(b) of the rules and regulations, delegations of authority to the Chief, Common Carrier Bureau.

Adopted April 4, 1986.
Released April 10, 1986.

By the Commission.

1. Subject to certain limitations, the Chief, Common Carrier Bureau, has authority under § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291, to act on matters involving carriers subject to the Communications Act when no novel questions of fact, law or policy are presented and the matters can be resolved under outstanding precedents and guidelines. Under one such limitation specified in § 0.291(b) of the Rules, the Bureau is generally precluded from promulgating orders pursuant to section 219 or section 220 of the Act.[1]

2. Section 220(f) of the Act, 47 U.S.C. 220(f), provides, *inter alia*, that no officer or employee of the Commission "shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts [of carriers subject to the Act] *except insofar as he may be directed by the Commission. . . .*" (emphasis added). We believe that authority to act on requests for inspection of records filed pursuant to the Freedom of Information Act, 5 U.S.C. 552 (FOIA), has always been delegated to the Chief, Common Carrier Bureau, under section 0.291 of our Rules with respect to all records within the Bureau's custody. However, in order to remove any doubt or uncertainty whether the Chief, Common Carrier Bureau, has authority to act on FOIA requests involving records which may fall within the meaning of section 220(f), we will amend § 0.291(b) to make it clear that he is delegated that authority. We emphasize that this is a clarification of an ambiguity in an already existing delegation of authority and it serves the public interest by ensuring an expeditious mechanism for responding to FOIA requests.[2] Because this is a rule of agency organization, procedure and practice, notice and comment is not required.

3. Accordingly, it is ordered, pursuant to authority contained in Sections 4(i), 4(j), 5(c) and 220(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c) and 220(f), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, that Section 0.291(b) of the Commission's Rules and Regulations, 47 CFR 0.291(b), is hereby amended as specified in paragraph 4, below.

4. It is further ordered that 47 CFR Part 0 is amended as follows:

PART 0—COMMISSION ORGANIZATION

The authority citation for Part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

47 CFR 0.291(b) is amended by removing "and," before paragraph (2) and the period at the end of that paragraph and inserting "; and" in place of the period and by adding new paragraph (b)(3) as follows:

§ 0.291 Authority delegated.

* * * * *

(b) *Authority concerning sections 219 and 220 of the Act. . . .*; and (3) act on requests for information filed pursuant to the Freedom of Information Act, 5 U.S.C. 552, including authority to furnish copies of documents and other records.

5. It is further ordered that this amendment shall be effective upon publication in the **Federal Register.**

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86–8695 Filed 4–17–86; 8:45 am]
BILLING CODE 6712-01-M

[1] Section 0.291(b) currently provides two exceptions by delegating authority to approve depreciation charges on an interim basis and to release information to state public utility commissions under certain conditions.

[2] Section 0.461 (f) and (g) of our Rules provide that requests for inspection of records will be acted on by the custodian of the records, and that such custodian will make every effort to do so within 10 working days after a request is received by the FOIA Control Office.

Proposed Rules

Federal Register
Vol. 51, No. 75
Friday, April 18, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-205-82]

Procedure and Adminstration; Miscellaneous Provisions Related to the Tax Treatment of Partnership Items

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to certain rules for the tax treatment of partnership items. The Tax Equity and Fiscal Responsibility Act of 1982 amended the applicable law. The proposed regulations would clarify miscellaneous provisions related to the tax treatment of partnership items and would provide guidance to partners and partnerships affected.

DATE: Written comments and requests for a public hearing must be delivered or mailed by June 17, 1986.

The regulations relating to consolidated partnership proceedings are proposed to apply with respect to partnership taxable years beginning after September 3, 1982. However, if a partnership and the Service agree to accelerate the effective date for the consolidated proceedings pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, the regulations are proposed to apply with respect to that partnership for any partnership taxable years ending after September 3, 1982.

The regulations relating to consolidated S corporation proceedings (paragraphs (b) and (c)(2) of proposed § 301.6233–1) are proposed to apply with respect to taxable years beginning after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–205–82), 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T LR–205–82). Telephone 202–566–3318 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) there was no mechanism for making tax adjustments at the partnership level since the partnership was not the taxable entity. Section 402 of that Act added sections 6221 through 6231 to the Internal Revenue Code to allow for consolidated administrative and judicial proceedings to determine the tax treatment of "partnership items" at the partnership level rather than at the partner level. Final regulations defining "partnership items" are set forth in the Rules and Regulations portion of this issue of the Federal Register. Temporary regulations and a notice of proposed rulemaking concerning special enforcement areas under section 6231(c) were published in the **Federal Register** on December 13, 1984 (49 FR 48536, 48573). Section 714(p)(1) of the Tax Reform Act of 1984 (98 Stat. 494) added section 6233 to the Internal Revenue Code. Generally, section 6233 extends the rules for consolidated administrative and judicial proceedings to entities filing partnership returns or S corporation returns. Final regulations under section 6232, concerning the tax treatment of partnership items for windfall tax purposes, were published in the **Federal Register** on October 1, 1985 (50 FR 39,998). The proposed regulations contained in this document address a variety of issues that arise under Code sections 6221 through 6231 and section 6233.

Explanation of Provisions

Tax Treatment Determined at the Partnership Level

Section 6221 states that the tax treatment of any partnership item shall be determined at the partnership level. Proposed § 301.6221–1 provides that neither the Service nor the taxpayer may make any change to the treatment of a partnership item on the partner's return except as provided in sections 6222 through 6231 and the regulations thereunder. Thus, a partner who treats partnership items on the partner's return in a manner that is consistent with the treatment of those items on the partnership return is generally not subject to an adjustment of those items except through a partnership-level proceeding. Likewise, a taxpayer may not put partnership items in issue in a proceeding relating to nonpartnership items.

Notification of Inconsistent Treatment

Section 6222 requires the partner to treat partnership items on the partner's return in a manner consistent with the treatment of those items on the partnership return. This rule does not apply if the partner treats an item inconsistently and notifies the Service of the inconsistency.

The proposed regulations provide that the notification of inconsistent treatment of partnership items is to be made by filing the form prescribed by the Service for that purpose (currently, Form 8082) in accordance with the instructions accompanying that form.

If a partner reports the inconsistent treatment of any partnership items in accordance with proposed § 301.6222(b)–1, the Service generally may not make an adjustment with respect to that partnership item unless the Service conducts a partnership-level proceeding or notifies the partner under section 6231(b)(1)(A) that all partnership items arising from that partnership will be treated as nonpartnership items with respect to that partner and conducts a separate proceeding. The proposed regulations make clear that adjustments in a separate proceeding with the partner are not limited to conforming adjustments. Likewise, a partner who reports an inconsistent treatment is protected only to the extent of notification. Thus, if the partner fails to point out another inconsistent item on the return, that item is subject to a computational adjustment to conform the treatment of that item on the partner's return to the treatment of the item on the partnership return.

Notice Sent to Partnership

The date that a notice with respect to a partnership proceeding is mailed to the tax matters partner is a significant event. For instance, a partner is not entitled to notice unless the partner is adequately identified at least 30 days before the notice is mailed to the tax

matters partner. Proposed § 301.6223(a)–1 provides that a notice is mailed to the tax matters partner on the earlier of the date on which the notice is mailed to the "TAX MATTERS PARTNER" at the address of the partnership or the date on which the notice is mailed to the person who is the tax matters partner at the address of the partner or the partnership.

Notice Group

Section 6223 requires the Service to send notice of proceedings to the representative of any group of partners owning at least an aggregate 5-percent profits interest in the partnership (a "notice group") if the group so requests. Proposed § 301.6223(b)–1 provides that a notice group may be formed only with respect to partnership taxable years that have ended before the request is filed. However, a request by a notice group may relate to more than one taxable year. The proposed regulations also provide that the notice group may include notice partners entitled to separate notice and that a partner may join a notice group after the formation of the group at any time by providing the service with the required information. The proposed regulations further provide that a partner cannot be a member of more than one notice group with respect to the same partnership for the same taxable year or withdraw from a notice group. While the proposed rules with respect to notice groups are intended to allow partners flexibility to form and join notice groups, these limitations are necessary for administrative reasons.

The proposed regulations make clear that partners forming a notice group are not necessarily associating themselves as a "5-percent group" for purposes of litigation. The representative of a notice group does not have the power to file a petition for judicial review on behalf of the group. All members of any "5-percent group" must join in filing any petition. The role of the notice group representative is administrative (that is, forwarding notice to the members of the group). He or she is not the legal representative of the group.

Withdrawal of Notice of Beginning of Administrative Proceeding

Proposed § 301.6223 (a)–2 provides that the Service may withdraw a notice of the beginning of an administrative proceeding within 45 days after that notice is mailed to the tax matters partner if the Service decides not to propose any adjustments to the partnership return as filed. If the Service withdraws the notice, neither the Service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner. Proposed § 301.6223(a)–2(b) limits the circumstances under which the service can reissue a notice of the beginning of an administrative proceeding once it has been withdrawn.

Duties of Tax Matters Partner

Proposed § 301.6223(g)–1 defines the responsibility of the tax matters partner to furnish information on developments in the proceeding to the partners.

Settlement Agreements and Unidentified Indirect Partners

Proposed § 301.6224(c)–2 provides that indirect partners who are not separately identified at least 30 days before the settlement are bound by any settlement agreement entered into by the pass-thru partner. This provision allows the Service the same 30-day period for taking identifying information with respect to an indirect partner into account for settlement purposes as well as for purposes of sending notices to such a partner.

Consistent Settlements

Proposed §301.6224(c)–3 provides that any partner desiring settlement terms consistent with the terms of any settlement agreement entered into with any other partner must file with the Internal Revenue Service office that entered into the agreement a statement to that effect no later than the 150th day after the notice of the final partnership administrative adjustment is mailed to the tax matters partner (or, if later, the 60th day after the original settlement was entered into). The proposed regulations clarify that the "consistent settlement" requirement does not apply unless the items subject to the settlement were partnership items with respect to the partner who entered into the original settlement immediately before the settlement and are still partnership items with respect to the requesting partner at the time of the request.

Administrative Adjustment Requests

Proposed § 301.6227(b)–1 provides that an administrative adjustment request that the tax matters partner asks to have treated as a substituted partnership return remains an administrative adjustment request even if the Service decides not to treat the request as a substituted return. Thus, the tax matters partner may file suit under section 6228(a) if the Service fails to take timely action on the request.

An administrative adjustment request filed on behalf of a partner is similar to a claim for refund except that it relates only to partnership items and the partner's right to bring suit on the request is limited. Proposed §301.6227(c)–1 provides that the request must be filed on the form specified by the Service for that purpose (currently, Form 8082), in accordance with the instructions accompanying that form.

Definition of Partnership

Section 6231(a)(1) defines the term "partnership" broadly to include any partnership required to file a return under section 6031(a) but provides an exception from the consolidated partnership procedures for certain small partnerships. A partnership qualifies for this exception for any partnership taxable year only if during that taxable year it has 10 or fewer partners and each partners's share of each partnership item is the same as his or her share of every other item. The proposed regulations provide that a partnership does not qualify for the exception if any of its partners is a pass-thru partner (other than a partner's estate).

The proposed regulations apply the "10 or fewer" limitation to the aggregate number of individuals who are partners at any one time during the partnership taxable year. Thus, a partnership that never has more than 10 partners at any given moment during the taxable year would be treated as a small partnership even if, because of transfers, 11 or more individuals hold interests in the partnership during the course of the taxable year. A husband and wife are treated as one partner.

The "same share" requirement excludes from the scope of the small partnership exception any partnership making item allocations (other than special allocations under section 704(c) and certain allocations based on similar concepts). Under this requirement, a partner generally must have the same percentage interest in all items of partnership income or loss. Some items that will be treated as "partnership items" for general purposes under the proposed rules will not be treated as "partnership items" for purposes of the "same share" requirement. The proposed regulations apply the "same share" rule only in the case of specified distributive share partnership items. The same share requirement is satisfied for a taxable year if during all periods within that taxable year each partner's share of each of the enumerated partnership items is the same as the partner's share of each of the other enumerated items during that period (even though the partners share of all enumerated items

changes from period to period within that taxable year).

An exempt small partnership may elect to be subject to the new partnership procedures. The proposed regulations provide procedural rules for making this election.

Spouse Filing Joint Return With Individual Holding Separate Interest

Generally, proposed § 301.6231(a)(2)–1 treats a spouse who files a joint return with an individual holding a separate interest in the partnership as a partner. Thus, the spouse will be permitted to participate in administrative and judicial proceedings. However, the spouse will not be counted as a partner for purposes of applying the special rules for partnerships with more than 100 partners or the exception for small partnerships.

Affected Items and Computational Adjustments

Proposed § 301.6231(a)(5)–1 provides that the term "affected item" includes a partner's basis in his or her partnership interest and application of the at-risk limitation, to the extent these items are not partnership items. Additions to tax and additional amounts that are attributable to partnership items or affected items are also affected items. Proposed § 301.6231(a)(6)–1 provides that a change in the tax liability of a partner to properly reflect the treatment of a partnership item is made through a computational adjustment. In some cases, a change in tax liability attributable to an affected item may be made through a computational adjustment. However, if a change in the tax liability cannot be made without certain partner-level determinations then the change attributable to such partner-level determinations is made through deficiency procedures and not through a computational adjustment. Certain affected items may require partner-level determinations; for example, a partner's at-risk amount may depend upon the source from which the partner obtained the funds that the partner contributed to the partnership. Other affected items, such as the threshold amount for medical deductions that changes as a result of determinations made at the partnership level, do not require partner-level determinations and can thus be included in a computational adjustment. Proposed § 301.6231(a)(6)–1 provides that a computational adjustment may not include any additions to tax or additional amounts.

Designation of a Tax Matters Partner

Section 6231(a)(7) provides that the tax matters partner is the general partner designated as the tax matters partner in the manner prescribed by regulations. The proposed regulations provide that a person may be designated as the tax matters partner only if the person was a general partner at some time during the taxable year for which the designation is made or is a general partner as of the time the designation is made. The proposed regulations provide that the partnership may designate the tax matters partner for a taxable year on the partnership return if the form prescribed for the partnership return (currently, Form 1065) for that taxable year contains a space for the designation of a tax matters partner. If the form does not contain such a space, the designation may be made on a statement filed with the partnership return. Currently, Form 1065 does not contain a space for the designation. The proposed regulations also permit designations in other circumstances. A designated tax matters partner may certify to the Service the selection of a successor. In addition, a tax matters partner may be designated after the filing of the partnership return by general partners with a majority interest (taking into account only interests held by general partners) or, under certain circumstances, by partners with a majority overall interest. The proposed regulations also provide rules for terminating this designation and for determining the tax matters partner when the partnership has not made a designation.

The proposed regulations permit the designation of an alternate tax matters partner if the partnership designates an individual as tax matters partner. The alternate tax matters partner automatically succeeds the designated tax matters partner if the tax matters partner dies or is adjudicated incompetent. The proposed regulations limit the ability of a partnership to designate a tax matters partner who is not a United States person.

Special Enforcement Areas

Under thr rules for consolidated partnership proceedings, if a partner treats partnership items on the partner's return consistently with the treatment of those items on the partnership return, generally no adjustment can be made with respect to a partnership item on that partner's return without conducting a partnership-level proceeding to determine the tax treatment of partnership items with respect to all partners. The requirement of a partnership-level proceeding before an assessment with respect to partnership items can be made would interfere with certain existing tax procedures. For example, a jeopardy assessment may ordinarily be made immediately if the Service believes that the assessment or collection of a deficiency will be jeopardized by delay.

Section 6231(c) lists certain areas that may present special enforcement problems udner the rules for consolidated proceedings and authorizes the addition of other areas to the list of special enforcement areas by regualtions. The proposed regulations add to the list of special enforcement areas provided in section 6231(c) the following: bankruptcy, receivership, and requests for prompt assessment under section 6501(d). Additional special enforcement problems were addressed in temporary regulations and a notice of proposed relemaking which were published in the **Federal Register** on December 13, 1984 (49 FR 48536, 48573). The temporary regulations, §§ 301.6231(c)–1T and 301.6231(c)–2T, provide special rules for certain applications for tentative carryback and refund adjustments based on partnership losses, deductions, or credits and for certain refund claims based on losses, deductions, or credits from abusive tax shelter partnerships.

Section 6231(c) provides that to the extent that the regulations provide that the treatment of items as partnership items in these special cases will interfere with the effective and efficient enforcement of internal revenue laws, those items will be treated as nonpartnership items. The proposed regulations state when application of the new rules for treatment of partnership items would interfere with effective tax administration and note the date on which the partnership items become nonpartnership items. For example, when a petition is filed in Bankruptcy Court naming a bankrupt partner as debtor, any action in any court to determine the bankrupt partner's tax liability is stayed. The Bankruptcy Court may exercise its discretion to determine the tax liability of the bankrupt partner but the rules for consolidated partnership proceedings do not confer any jurisdiction over the partnership proceedings. Determining the tax liability of a partner who is named as a debtor in a bankruptcy proceeding under the rules for consolidated partnership proceedings would interfere with the effective and efficient enforcement of the tax laws. Therefore, the proposed regulations provide that all partnership items as of such a partner

will be treated as nonpartnership items as of the date a petition naming that partner as a debtor is filed in bankruptcy. The proposed regulations do not include foreign partnerships as a special enforcement area. Items treated as nonpartnership items are subject to adjustment in separate proceedings.

Effect of Judicial Decision on Certain Proceedings

Section 6231(e) provides that a court decision with respect to a parnter's income tax liability not resulting from a partnership procceding shall not be a bar to further proceedings with respect to that liability because of items which become nonpartnership items after the appropriate time to include them in the earlier court proceeding has passed. Proposed § 301.6231(e)–2 makes clear that the Service could issue a later deficiency notice for the same taxable year with respect to that partner and that that partner could bring a refund suit with respect to those items that have become nonpartnership items.

Proposed § 301.6231(e)–1 makes clear that a determination with respect to an item in a nonpartnership proceeding with a partner is not controlling in the determination of that item with respect to other partners. For example, the finding of a court in a separate proceeding with a partner that a certain partnership expenditure is deductible does not bind either the Service or the other partners in a later partnership proceeding. While this proposition is not specifically spelled out in the statute, it is implicit in the statutory scheme which permits separate proceedings before the conclusion of partnership-level proceedings.

Disallowance of Losses and Credits in Certain Cases

Proposed § 301.6231(f)–1 provides that the disallowance rule in section 6231(f) applies to both domestic and foreign partnerships. Although the heading of that Code provision refers to "foreign partnerships," the actual statutory language is not so limited. The purpose of the provision is to prevent partners from deriving tax benefits from any partnership, foreign or domestic, that fails to file a required partnership return if either the tax matters partner resides outside the United States or the books and records of the partnership are maintained outside the United States. Either of these circumstances could substantially increase the administrative burden on the Service in auditing the partnership.

The proposed regulations provide that the losses and credits arising from a partnership will be disallowed to a partner only if the partnership fails to file the required return within 60-days after the Service notifies the partner of the problem. Even if the partnership fails to file the return within that 60-day period, the losses or credits may still be allowed in whole or in part if the partner shows that the losses and credits are proper and that the partner has made a good faith effort to have the partnership file the return.

Extension to Entities Filing a Partnership or S Corporation Return, etc.

Proposed § 301.6233–1 provides that the provisions of subchapter C of chapter 63 of the Code ("subchapter C") apply with respect to entities filing a partnership return for taxable years beginning after September 3, 1982 (and certain earlier years to which an election to be included within the rules for consolidated proceedings provisions applies), the entity's items for that taxable year, and to any person holding an interest in the entity for that taxable year. The provisions of subchapter C also apply where a partnership return is filed but it is determined that there is no entity. However, the provisions of subchapter C do not apply to entities for any taxable year in which the entity would qualify for the small partnership exception under proposed § 301.6231(a)(1)–1 if the entity were a partnership and for any taxable year for which a partnership return was filed for the sole purpose of making an election under section 761(a).

Proposed § 301.6233–1 also provides that the provisions of subchapter D of chapter 63 of the Code ("subchapter D") apply with respect to entities filing a return as an S corporation for taxable years beginning after December 31, 1982, the entity's items for that taxable year, and any person holding an interest in the entity for that taxable year. The provisions of subchapter D also apply where an S corporation return is filed but it is determined that there is no entity. Regulations under subchapter D will be promulgated at a future date.

Comments and Public Hearing

Before the adoption of these proposed regulations consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20530. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Pursuant to 5 U.S.C. 605(b), it is hereby certified that the requirements of the Regulatory Flexibility Act do not apply to this notice of proposed rulemaking because the proposed regulations will not have a significant economic impact on a substantial number of small entities. The definitional rules being proposed apply regardless of the size of the partnership. The procedural rules are designed to keep the reporting burden to the minimum necesary to enable the Internal Revenue Service to administer the law; duplicate filing is required in certain instances to permit the Service to coordinate examinations of partners and partnerships.

Drafting Information

The principal author of these proposed regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Proposed Amendments to the Regulations

It is proposed to amend 26 CFR Part 301 as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6221–1 also issued under 26 U.S.C. 6230(k). Section 301.6222(a)–1 also issued under 26 U.S.C. 6230(k). Section 301.6222(a)–2 also issued under 26 U.S.C. 6230(k). Section 301.6222(b)–1 also issued under 26 U.S.C. 6230(k). Section 301.6222(b)–2 also issued under 26 U.S.C. 6230(k). Section 301.6222(b)–3 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6223(a)–2 also issued under 26 U.S.C. 6230(k). Section 301.6223(a)–1 also issued under 26 U.S.C. 6230(k). Section 301.6223(b)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6223(c)–1 also issued under 26 U.S.C. 6223(c) and 6230 (i) and (k). Section 301.6223(e)–1 also issued under 26 U.S.C. 6230(k). Section 301.6223(e)–2 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6223(f)–1 also issued under 26 U.S.C. 6230(k). Section 301.6223(g)–1 also issued under 26 U.S.C. 6223(g) and 6230 (i) and (k). Section 301.6223(h)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6224(a)–1 also issued under 26 U.S.C. 6230(k). Section 301.6224(b)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6224(c)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6224(c)–2 also issued under 26 U.S.C. 6230(k). Section 301.6224(c)–3 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6226(a)–1 also issued under 26 U.S.C. 6230(k). Section 301.6226(b)–1 also issued under 26 U.S.C. 6230(k). Section 301.6226(e)–1 also issued under 26 U.S.C. 6230(k). Section 301.6226(f)–1 also issued under 26 U.S.C. 6230(k). Section 301.6227(b)–1 also issued under 26 U.S.C. 6227(b)(3) and 6230 (i) and (k). Section 301.6227(c)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6229(b)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6229(e)–1 also issued under 26 U.S.C. 6230(k). Section 301.6230(b)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6230(c)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6230(e)–1 also issued under 26 U.S.C. 6230 (i) and (k). Section 301.6231(a)(1)–1 also issued under 26 U.S.C. 6230(k). Section 301.6231(a)(2)–1 also issued under 26 U.S.C. 6230(k) and 6231(a)(12). Section 301.6231(a)(5)–1 also issued under 26 U.S.C. 6230(k). Section 301.6231(a)(6)–1 also issued under 26 U.S.C. 6230(k). Section 301.6231(a)(7)–1 also issued under 26 U.S.C. 6230(k) and 6231(a)(7). Section 301.6231(a)(12)–1 also issued under 26 U.S.C. 6230(k) and 6231(a)(12). Section 301.6231(c)–3 also issued under 26 U.S.C. 6230(k) and 6231(c). Section 301.6231(c)–4 also issued under 26 U.S.C. 6230(k) and 6231(c). Section 301.6231(c)–5 also issued under 26 U.S.C. 6230(k) and 6231(c). Section 301.623(c)–6 also issued under 26 U.S.C. 6230(k) and 6231(c). Section 301.6231(c)–7 also issued under 26 U.S.C. 6230(k) and 6231(c). Section 301.6231(c)–8 also issued under 26 U.S.C. 6230(k) and 6231(c). Section 301.6231(d)–1 also issued under 26 U.S.C. 6230(k). Section 301.6231(e)–1 also issued under 26 U.S.C. 6230(k). Section 301.6231(e)–2 also issued under 26 U.S.C. 6230(k). Section 301.6231(f)–1 also issued under 26 U.S.C. 6230 (i) and (k) and 6231(f). Section 301.6233–1 also issued under 26 U.S.C. 6230(k) and 6233.

Par. 2. There are inserted in the appropriate places the following new sections.

301.6221–1, 301.6222(a)–1, 301.6222(a)–2, 301.6222(b)–1, 301.6222(b)–2, 301.6222(b)–3, 301.6223(a)–1, 301.6223(a)–2, 301.6223(b)–1, 301.6223(c)–1, 301.6223(e)–1, 301.6223(e)–2, 301.6223(f)–1, 301(g)–1, 301.6223(h)–1, 301.6224(a)–1, 301.6224(b)–1, 301.6224(c)–1, 301.6224(c)–2, 301.6224(c)–3, 301.6226(a)–1, 301.6226(b)–1, 301.6226(e)–1, 301.6226(f)–1, 301.6227(b)–1, 301.6227(c)–1, 301.6229(b)–1, 301.6229(e)–1, 301.6230(b)–1, 301.6230(c)–1, 301.6230(e)–1, 301.6231(a)(1)–1, 301.6231(a)(2)–1, 301.6231(a)(5)–1, 301.6231(a)(6)–1, 301.6231(a)(7)–1, 301.6231(a)(12)–1, 301.6231(c)–3, 301.6231(c)–4, 301.6231(c)–5, 301.6231(c)–6, 301.6231(c)–7, 301.6231(c)–8, 301.6231(d)–1, 301.6231(e)–1, 301.6231(e)–2, 301.6231(f)–1, and 301.6233–1.

§ 301.6221–1 Tax treatment determined at partnership level.

(a) *In general.* A partner's treatment of partnership items on the partner's return may not be changed except as provided in sections 6222 through 6231 of the Code and the regulations thereunder. Thus, for example, if a partner treats an item on the partner's return consistently with the treatment of the item on the partnership return, the Internal Revenue Service generally cannot adjust the treatment of that item on the partner's return except through a partnership-level proceeding. Similarly, the taxpayer may not put partnership items in issue in a proceeding relating to nonpartnership items. For example, the taxpayer may not offset a potential increase in taxable income based on changes in nonpartnership items by a potential decrease based on partnership items.

(b) *Restrictions in applicable after items become nonpartnership items.* Section 6221 and paragraph (a) of this section cease to apply to items arising from a partnership with respect to a partner when those items cease to be partnership items with respect to that partner under section 6231 (b).

(c) *Cross reference.* See §§ 301.6231(c)–1T and 301.6231(c)–2T for special rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

§ 301.6222(a)–1 Consistent treatment of partnership items.

(a) *In general.* The treatment of a partnership item on the partner's return shall be consistent with the treatment of that item by the partnership in all respects including the amount, timing, and characterization of the item.

(b) *Treatment must be consistent with partnership return.* The treatment of a partnership item on the partner's return shall be consistent with the treatment of that item on the partnership return. Thus, a partner who treats an item consistently with a schedule or other information furnished to the partner by the partnership has not satisfied the requirement of paragraph (a) of this section if the treatment of that item is inconsistent with the treatment of the item on the partnership return actually filed. For rules relating to the election to be treated as having reported the inconsistency where the partner treats an item consistently with an incorrect schedule, see § 301.6222(b)–3.

(c) *Examples.* The following examples illustrate the principles set forth in this section.

Example (1). B is a partner of Partnership P. Both B and P use the calendar year as the taxable year. In December 1983, P receives an advance payment for services to be performed in 1984 and reports this amount as income for calendar year 1983. However, B reports B's distributive share of this amount on B's income tax return for 1984 and not on B's return for 1983. B's treatment of this partnership item is inconsistent with the treatment of the item by P.

Example (2). Partnership P incurred certain start-up costs before P was actively engaged in its business. P capitalized these costs. C, a partner in P, deducted C's proportionate share of these start-up costs. C's treatment of the partnership expenditure is inconsistent with the treatment of that item by P.

Example (3). D is a partner in partnership P which reports a loss of $100,000 on its return, $5,000 of which it reports on the Schedule K–1 attached to its return as D's distributive share. However, P reports $15,000 as D's distributive share of P's loss on the Schedule K–1 furnished to D. D reports the $15,000 loss on D's income tax return. D has not satisfied the consistency requirement. See, however, § 301.6222 (b)–3 for an election to be treated as having reported the inconsistency.

§ 301.6222(a)–2 Application of consistency and notification rules to indirect partners.

(a) *In general.* The consistency requirement of § 301.6222(a)–1 is generally applied with respect to the source partnership. For purposes of this section, the term "source partnership" means the partnership (within the meaning of section 6231(a)(1)) from which the partnership item originates.

(b) *Indirect partner files consistently with source partnership.* An indirect partner who treats an item from a source partnership in a manner which is consistent with the treatment of that item on the return of the source

partnership satisfies the consistency requirement of section 6222(a) regardless of whether the indirect partner treats that item in a manner which is consistent with the treatment of that item by the pass-thru partner through which the indirect partner holds the interest in the source partnerhip. Under these circumstances, therefore, the Service shall not send to the indirect partner the notice described in section 6231(b)(1)(A).

(c) *Indirect partner files inconsistently with source partnership*—(1) *Indirect partner notifies Service of inconsistency.* An indirect partner who—

(i) Treats an item from a source partnership in a manner which is inconsistent with the treatment of that item on the return of the source partnership, and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1,

shall not be subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(2) *Indirect partner does not notify Service of inconsistency.* Except as provided in paragraph (b)(3) of this section, an indirect partner who—

(i) Treats an item from a source partnership in a manner which is inconsistent with the treatment of that item on the return of the source partnership, and

(ii) Fails to file a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1,

is subject to a computational adjustment to conform the treatment of that item to the treatment of that item on the return of the source partnership.

(3) *Indirect partner files consistently with a pass-thru partner that notifies the Service of the inconsistency.* If an indirect partner treats an item from a source partnership in a manner which is consistent with the treatment of that item by a pass-thru partner through which the indirect partner holds the interest in the source partnership and that pass-thru partner—

(i) Treats that item in a manner that is inconsistent with the treatment of that item on the return of the source partnership, and

(ii) Files a statement identifying the inconsistency with the source partnership in accordance with § 301.6222(b)–1,

the indirect partner is not subject to a computational adjustment to conform the treatment of that item of the treatment of that item on the return of the source partnership.

(d) *Examples.* The following examples illustrate the principles set forth in this section.

Example (1). One of the partners in Partnership A is Partnership B, which has four equal partners C, D, E, and F. Both A and B are partnerships within the meaning of section 6231(a)(1). On its return, A reports $100,000 as B's distributive share of A's ordinary income. B, however, reports only $80,000 as its distributive share of the income and does not notify the Service of this inconsistent treatment with respect to A. C reports $20,000 as its distributive share of the item. Although C reports the item consistently with B, C is subject to a computational adjustment to conform the treatment of that item on C's return to the treatment of that item on the return of A.

Example (2). Assume the same facts as in example (1) except that B notified the Service of its inconsistent treatment with respect to source partnership A. C is not subject to a computational adjustment.

Example (3). Assume the same facts as in example (1). D reports only $15,000 as D's distributive share of the income and does not report the inconsistency. F reports only $9,000 as its distributive share of the item but reports this inconsistency with respect to source partnership A. D is subject to a computational adjustment to conform the treatment of that item on D's return to the treatment of that item on the return of A. F is not subject to a computational adjsutment.

Example (4). Assume the same facts as in example (3) except that F reported the inconsistency with respect to B and did not report the inconsistency with respect to source partnership A. F is subject to a computational adjustment to conform the treatment of that item on F's return to the treatment of that item on the return of A.

Example (5). Assume the same facts as in example (1). E reports $25,000 as its distributive share of the item. Regardless of whether E reports the inconsistency between its treatment of the item and that by B, E is neither subject to a computational adjustment to conform E's treatment of that item to that of B nor subject to the notice described in section 6231(b)(1)(A) with respect to any such notification of inconsistent treatment.

§ 301.6222(b)–1 Notification to Service when partnership items are treated inconsistently.

The statement identifying an inconsistency described in section 6222(b)(1)(B) shall be filed by filing the form prescribed for that purpose in accordance with the instructions accompanying that form.

§ 301.6222(b)–2 Effect of notification of inconsistent treatment.

(a) *In general.* Generally, if a partner treats a partnership item on the partner's return in a manner which is inconsistent with the treatment of that item on the partnership return the Service may make a computational adjustment to conform the treatment of the item by the partner with the treatment of that item on the partnership return. Any additional tax resulting from that computational adjustment may be assessed without either the commencement of a partnership proceeding or notification to the partner that all partnership items arising from that partnership will be treated as nonpartnership items. However, if a partner notifies the Service of the inconsistent treatment of a partnership item in the manner prescribed in § 301.6222(b)–1, the Service generally may not make an adjustment with respect to that partnership item unless the Service—

(1) Conducts a partnership-level proceeding, or

(2) Notifies the partner under section 6231(b)(1)(A) that all partnership items arising from that partnership will be treated as nonpartnership items.

See, however, §§ 301.6231(c)–1T and 301.6231(c)–2T for specal rules relating to certain applications and claims for refund based on losses, deductions, or credits from abusive tax shelter partnerships.

(b) *Partner protected only to extent of notification.* A partner who reports the inconsistent treatment of partnership items on the partner's return is protected from computational adjustments under section 6222(c) only with respect to those partnership items the inconsistent treatment of which is reported. Thus, if a partner notifying the Service with respect to one item fails to report the inconsistent treatment of another item, the partner is subject to a computational adjustment with respect to that latter item.

Example. Partner A of Partnership P treats a deduction and a capital gain arising from P on A's return in a manner that is inconsistent with the treatment of those items by P. A reports the inconsistent treatment of the deduction but not of the gain. A is subject to a computational adjustment under section 6222(c) with respect to the gain.

(c) *Adjustments in a separate proceeding not limited to conforming adjustments.* If the Service conducts a separate proceeding with a partner whose partnership items are treated as nonpartnership items under section 6231 (b), the Service is not limited to making adjustments that merely conform the partner's return to the partnership return.

Example. Partnership P allocates to E, one of its partners, a loss of $8,000. E, however, claims a loss of $9,000 and reports the inconsistent treatment. The Service notifies E that it will treat all of E's partnership items

arising from P as nonpartnership items. As a result of a separate proceeding with E, the Service may issue a deficiency notice which could include reducing the loss to $3,000.

§ 301.6222(b)-3 Partner receiving incorrect schedule.

(a) *In general.* A partner shall be treated as having complied with section 6222(b)(1)(B) and § 301.6222(b)-1 with respect to a partnership item if the partner—

(1) Demonstrates that the treatment of the partnership item on the partner's return is consistent with the treatment of that item on the schedule prescribed by the Service and furnished to the partner by the partnership showing the partner's share of income, credits, deductions, etc., and

(2) Elects in accordance with the rules prescribed in paragraph (b) of this section to heve this section apply with respect to that item.

(b) *Election provisions*—(1) *Time and manner of making election.* The election described in paragraph (a) of this section shall be made by filing a statement with the Internal Revenue Service office issuing the notice of computational adjustment within 30 days after the notice is mailed to the partner. .

(2) *Contents of statement.* The statement described in paragraph (b)(1) of this section shall be:

(i) Clearly identified as an election under section 6222(b)(2),

(ii) Signed by the partner making the election, and

(iii) Accompanied by copies of the schedule furnished to the partner by the partnership and of the notice of computational adjustment. The partner need not enclose a copy of the notice of computational adjustment, however, if the partner clearly identifies the notice of computational adjustment. Generally, the requirement described in paragraph (a)(1) of this section will be satisfied by attaching to the statement a copy of the schedule furnished to the partner by the partnership. However, if it is not clear from the information contained on the schedule that the treatment of the partnership item on the schedule is consistent with the partner's treatment of such item on the partner's return the statement shall also include an explanation of how the treatment of such item on the schedule is consistent with the treatment on the partner's return with respect to the characterization, timing, and amount of such item.

§ 301.6223(a)-1 Notice sent to tax matters partner.

(a) *In general.* For purposes of subchapter C of chapter 63 of the Code, a notice is treated as mailed to the tax matters partner on the earlier of—

(1) The date on which the notice is mailed to "THE TAX MATTERS PARTNER" at the address of the partnership (as provided on the partnership return, except as updated under §301.6223(c)-1), or

(2) The date on which the notice is mailed to the person who is the tax partner at the address of that person (as provided on the partner's return, except as updated under § 301.6223(c)-1) or the partnership. See § 301.6223(c)-1 for rules relating to the information to be used by the Service in providing notices, etc.

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. Partnership P designates B as its tax matters partner in accordance with § 301.6231(a)(7)-1(b). On December 1 a notice of the beginning of an administrative proceeding is mailed to "THE TAX MATTERS PARTNER" at the address of P. On January 10, a copy of the notice is mailed to B at B's address. December 1 is treated as the date that the notice was mailed to the tax matters partner.

§ 301.6223(a)-2 Withdrawal of notice of the beginning of an administrative proceeding.

(a) *In general.* If the Internal Revenue Serivce, within 45 days after the day on which the notice specified in section 6223(a)(1) is mailed to the tax matters partner, decides not to propose any adjustments to the partnership return as filed, the Service may withdraw the notice specified in section 6223(a)(1) by mailing a letter to that effect to the tax matters partner within that 45-day period. If the Service withdraws the notice, neither the service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner. Except as provided in paragraph (b) of this section, a notice specified in section 6223(a)(1) which has been withdrawn shall be treated for purposes of subchapter C of chapter 63 of the Code as if that notice had never been mailed to the tax matters partner.

(b) *Service may not reissue notice except under certain circumstances.* If the notice specified in section 6223(a)(1) was mailed to the tax matters partner with respect to a partnership taxable year and that notice was later withdrawn as provided in paragraph (a) of this section, the Service shall not mail a second notice specified in section 6233(a)(1) with respect to that taxable year unless:

(1) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact;

(2) The prior proceeding involved a clearly defined substantial error with respect to an established Service position existing at the time of the previous examination; or

(3) Other circumstances exist which indicate that failure to reissue the notice would be a serious administrative omission.

§ 301.6223(b)-1 Notice group.

(a) *In general.* If a group of partners having in the aggregate a 5 percent or more interest in the profits of a partnership so requests and designates one of their members to receive the notices described in section 6223(a) (1) and (2), the member so designated shall be treated as a partner to whom section 6223(a) applies. Thus, the designated representative is entitled to receive any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Service receives the request from the group.

(b) *Request for notice*—(1) *In general.* The Service shall mail to the member of the notice group designated to receive such notice any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Service receives the request for notice from the group if such request for notice is made in accordance with the rules prescribed in this paragraph (b).

(2) *Content of request.* The request for notice from a notice group shall—

(i) Identify the partnership by name, address, and taxpayer identification number,

(ii) Specify the taxable year or years for which the notice group is formed,

(iii) Designate the member of the group to receive the notices,

(iv) Set out the name, address, taxpayer identification number, and profits interest of each member of the group, and

(v) Be signed by all partners comprising the notice group.

(3) *Place for filing.* The request for notice from a notice group generally shall be filed with the service center with which the partnership return is filed. However, if the notice group representative knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed that notice.

(4) *Copy to be sent to the tax matters partner.* A copy of the request for notice from a notice group shall be provided to the tax matters partner by the notice

group representative within 30 days after the request is filed with the Service.

(5) *Years covered by request.* A request for notice by a notice group may relate only to partnership taxable years that have ended before the request is filed. A request, however, may relate to more than one partnership taxable year if the 5 percent or more profits interest requirement of section 6223(b)(2) is satisfied for each year to which the request relates.

(c) *Composition of notice group*—(1) *In general.*

A notice group shall be comprised only of persons who were partners at some time during the partnership taxable year for which the group is formed. If a notice group is formed for more than one taxable year, each member of the group must have been a partner at some time during at least one of the taxable years for which the group is formed. A notice group may include a partner entitled to separate notice. See section 6231(d) and § 301.6231(d)–1 for rules relating to determining the interest of a partner in the profits of a partnership for a partnership taxable year for purposes of section 6223(b). See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(2) *Partner may be a member of only one group.* A partner cannot be a member of more than one notice group with respect to the same partnership for the same partnership taxable year. See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(3) *Partner may join group after formation.* A partner may join a notice group at any time after the formation of that group by filing with the Internal Revenue Service office with which the notice group filed its request a statement that it is joining the notice group. The statement shall identify the partner joining the notice group, the partnership, and the members of the notice group by name, address, and taxpayer identification number and shall be signed by the joining partner. A copy of the statement shall be provided by the joining partner to both the tax matters partner and the notice group representative with 30 days after the request is filed with the Service. The partner shall become a member of the notice group for each partnership taxable year for which the group was formed and for which the partner was a partner at any time during such partnership taxable year.

(4) *Date on which a partner becomes a member of notice group.* A partner shall become a member of a notice group on the 30th day after the day on which the Service receives—

(i) A request for notice from a notice group that identifies that partner as a member of that notice group, or

(ii) A statement filed in accordance with paragraph (c)(3) of this section that states that the partner is joining the notice group.

(5) *No withdrawal from notice group.* A partner who has signed a notice group request filed with the Service remains a member of that notice group until the group terminates. A partner cannot withdraw from the notice group.

(6) *Indirect and pass-thru partners—(i) Pass-thru partners and unidentified indirect partners.* A pass-thru partner may become a member of a notice group as provided in this section. For purposes of applying the aggregate interest requirement specified in paragraph (a) of this section to a pass-thru partner, the partnership interest held by the pass-thru partner shall not not include any interest held through the pass-thru partner by an indirect partner that has been identified as provided in section 6223(c)(3) and § 301.6223(c)–1 before the date on which the pass-thru partner becomes a member of the notice group.

(ii) *Indirect partners identified before the pass-thru partner joins a notice group.* An indirect partner may become a member of a notice group with respect to a partnership taxable year only if:

(A) The indirect partner held an interest in the partnership (either directly or through one or more pass-thru partners) at some time during that taxable year, and

(B) The indirect partner was identified as provided in section 6223(c)(3) and § 301.6223(c)–1 on or before the date on which the pass-thru partner became a member of a notice group.

(d) *Termination of notice group.* Unless the original request for notice from the notice group or a subsequent statement filed by the representative (in accordance with parapraph (b)(3) and (4) of this section) designates a successor to the designated group representative, the group terminates if the representative dies (or, in the case of an entity, if the entity is dissolved), resigns, or is adjudicated incompetent.

(e) *Notice group is not a 5-percent group.* The forming of a notice group under this section does not constitute the forming of a 5-percent group for purposes of litigation. A notice group is formed solely for the purpose of receiving notices. A 5-percent group is formed solely for the purpose of filing a petition for judicial review or appealing a judicial determination. See § 301.6226(b)–1. Thus, a member of a notice group may choose not to join a 5-percent group formed by other members of the notice group.

§ 301.6223 (c)–1 Additional information regarding partners furnished to the Service.

(a) *In general.* In addition to the names, addresses, and profits interests as shown on the partnership return, the Service will use additional information as provided in this section for purposes of administering subchapter C of chapter 63 of the Code.

(b) *Procedure for furnishing additional information*—(1) *In general.* Any person may furnish additional information at any time by filing a written statement with the Service. However, the information contained in the statement will be considered for purposes of determining whether a partner is entitled to a notice described in section 6223(a) only if the Service receives the statement at least 30 days before the date on which the Service mails the notice to the tax matters partner. Similarly, information contained in the statement generally will not be taken into account for other purposes by the Service until 30 days after the statement is received.

(2) *Where statement must be filed.* A statement furnished under this section shall generally be filed with the service center with which the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed such notice.

(3) *Contents of statement.* The statement shall—

(i) Identify the partnership, each partner for whom information is supplied, and the person supplying the information by name, address, and taxpayer identification number;

(ii) Explain that the statement is furnished to correct or supplement earlier information with respect to the partners in the partnership;

(iii) Specify the taxable year to which the information relates;

(iv) Set out the corrected or additional information, and

(v) Be signed by the person supplying the information.

(c) *No incorporation by reference to previously furnished documents.* Incorporation by reference of information contained in another document previously furnished to the Internal Revenue Service will not be given effect for purposes of sections 6223(c) or 6229(e). For example, reference to a return filed by a pass-thru

partner which contains identifying information with respect to the indirect partners of that pass-through partner is not sufficient to identify the indirect partners unless a copy of the document referred to is attached to the statement.

(d) *Information supplied by a person other than the tax matters partner.* The Service may require appropriate verification in the case of information furnished by a person other than the tax matters partner. The 30-day period referred to in paragraph (b)(1) of this section shall not begin until that verification is supplied.

(e) *Power of attorney*—(1) *In general.* This paragraph (e) applies to powers of attorney with respect to proceedings under subchapter C of chapter 63 of the Code ("chapter 63C") that begin on or after the date which is 90 days after the date final regulations under this section are published in the **Federal Register.**

(2) *Specifically for purposes of chapter 63C.* A power of attorney specifically for purposes of chapter 63C shall be furnished in accordance with paragraph (b)(2) of this section.

(3) *Existing power of attorney.* A power of attorney granted to another person by a partner for other tax purposes shall not be given effect for purposes of chapter 63C unless the partner specifically requests that the power be given such effect in a statement furnished to the Service in accordance with paragraph (b) of this section.

(f) *Service may use other information.* In addition to the information on the partnership return and that supplied on statements filed under this section, the Service may use other information in its possession (for example, a change in address reflected on a partner's return) in administering subchapter C of chapter 63 of the Code. However, the Service is not obligated to search its records for information not expressly furnished under this section.

301.6223 (e)–1 Effect of Service's failure to provide notice.

(a) *Notice group.* Section 6223(e)(1)(B)(ii) applies with respect to a notice group only if the request for notice described in § 301.6223(b)–1 is received by the Service at least 30 days before the notice is mailed to the tax matters partner.

(b) *Indirect partners*—(1) *In general.* For purposes of section 6223(e), the Service's failure to provide notice to a pass-thru partner that is entitled to notice under section 6223(b) is deemed failure to provide notice to indirect partners holding an interest in the partnership through the pass-thru partner. However, this rule does not apply if the indirect partner:

(i) Receives notice from the Service,

(ii) Is identified as provided in section 6223(c)(3) and § 301.6223(c)–1 at least 30 days before the notice is mailed to the tax matters partner, or

(iii) Is a member of a notice group entitled to notice under paragraph (a) of this section.

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). Partnership ABC has as one of its partners, A, a partnership with three partners, X, Y, and Z. ABC does not have more than 100 partners, and partnership A is entitled to notice under section 6223(a). In addition, Z was identified as provided in section 6223(c)(3) and § 301.6223(c)–1 on May 1, 1985. The Service mailed notice to the tax matters partner of ABC on July 1, 1985, but failed to provide notice to partnership A. Notwithstanding the Service's notice to the tax matters partner, the Service is deemed to have failed to provide notice to X and Y. The Service's failure to provide notice to A, however, has no effect on Z; whether notice was provided to Z is determined independently.

Example (2). Assume the same facts as in Example (1), except that the Service provided notice to partnership A but did not provide separate notice to Z. Notwithstanding the Service's notice to partnership A, the Service is deemed to have failed to provide notice to Z.

Example (3). Assume the same facts as in Example (1), except that partnership ABC has more than 100 partners and partnership A is entitled to notice under section 6223(b) because it had at least a 1 percent profits interest in partnership ABC. In addition, X became a member of a notice group on June 1, 1985, and the Service mailed notice to the designated member of that notice group. The Service also mailed a separate notice to Z. The Service's failure to provide notice to partnership A only affects Y, who is deemed not to have been provided notice by the Service.

§ 301.6223(e)–2 Elections if Service fails to provide timely notice.

(a) *Proceeding finished.* If at the time the Internal Revenue Service mails the partner notice of the proceeding—

(1) The period within which a petition for review of a final partnership administrative adjustment under section 6226 may be filed has expired and no petition has been filed, or

(2) The decision of a court in an action begun by such a petition has become final, the partner may elect in accordance with paragraph (c) of this section to have that adjustment, that decision, or a settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the adjustment relates apply to that partner. If the partner does not make an election in accordance with paragraph (c) of this section, the partnership items of the partner for the partnership taxable year to which the proceeding relates shall be treated as having become nonpartnership items as of the day on which the Service mails the partner notice of the proceeding.

(b) *Proceeding still going on.* If paragraph (a) of this section does not apply, the partner shall be a party to the proceeding unless the partner elects, in accordance with paragraph (c) of this section, to have—

(1) A settlement agreement described in section 6224(c)(2) with respect to the partnership taxable year to which the proceeding relates apply to the partner, or

(2) The partnership items of the partner for the partnership taxable year to which the proceeding relates treated as having become nonpartnership items as of the day on which the Service mails the partner notice of the proceeding.

(c) *Election*—(1) *In general.* The election described in paragraph (a) or (b) of this section shall be made in the manner prescribed in this paragraph (c). The election shall apply to all partnership items for the partnership taxable year to which the election relates.

(2) *Time and manner of making election.* The election shall be made by filing a statement with the Internal Revenue Service office mailing the notice regarding the proceeding within 45 days after the date on which that notice was mailed.

(3) *Contents of statement.* The statement shall—

(i) Be clearly identified as an election under section 6223(e) (2) or (3),

(ii) Specify the election being made (that is, application of final partnership administrative adjustment, court decision, consistent settlement agreement, or nonpartnership item treatment),

(iii) Identify the partner making the election and the partnership by name, address, and taxpayer identification number,

(iv) Specify the partnership taxable year to which the election relates, and

(v) Be signed by the partner making the election.

§ 301.6223(f)–1 Duplicate copy of final partnership administrative adjustment.

Section 6223(f) does not prohibit the Service from issuing a duplicate copy of the notice of final partnership administrative adjustment (for example, in the event the original notice is lost).

§ 301.6223(g)–1 Responsibilities of the tax matters partner.

(a) *Notices described in section 6223 (a)*—(1) *Notice or beginning of proceeding.* Except as otherwise provided in § 301.6223(a)–2, the tax matters partner shall, within 75 days after the mailing by the Service of the notice specified in section 6223(a)(1), forward a copy of that notice to each partner that is not entitled to notice from the Service under section 6223. See § 301.6230(e)–1 for information to be furnished to the Service.

(2) *Notice of final partnership administrative adjustment.* The tax matters partner shall, within 60 days after the mailing by the Service of the notice specified in section 6223(a)(2), forward a copy of that notice to each partner that is not entitled to notice from the Service under section 6223.

(3) *Requirement inapplicable in certain cases.* The tax matters partner is not required to send notice to a partner if—

(i) Before the expiration of the applicable 75-day or 60-day period the partnership items of that partner have become nonpartnership items (for example, by settlement),

(ii) That partner is an indirect partner and has not been identified to the tax matters partner at least 30 days before the tax matters partner is required to send such notice,

(iii) That partner is treated as a partner solely by virtue of § 301.6231(a)(2)–1,

(iv) That partner was a member of a notice group as of the date on which the notice was mailed to the tax matters partner (see § 301.6223(b)–1(c)(4) for the date on which a partner becomes a member of a notice group),

(v) The notice has already been provided to that partner by another person, or,

(vi) The notice is withdrawn by the Service under § 301.6223(a)–2.

(b) *Other notices or information*—(1) *In general.* The tax matters partner shall furnish to the partners specified in paragraph (b)(2) of this section information with respect to the following:

(i) Closing conference with the examining agent,

(ii) Proposed adjustments, rights of appeal, and requirements for filing of a protest,

(iii) Time and place of any Appeals conference,

(iv) Acceptance by the Service of any settlement offer,

(v) Consent to the extension of the period of limitations with respect to all partners,

(vi) Filing of a request for administrative adjustment (including a request for substituted return treatment under § 301.6227(b)–2) on behalf of the partnership,

(vii) Filing by the tax matters partner or any other partner or any petition for judical review under sections 6226 or 6228(a),

(viii) Filing of any appeal with respect to any judicial determination provided for in sections 6226 or 6228(a), and

(ix) Final judicial redetermination.

(2) *Partners to be notified.* The tax matters partner shall provide information with respect to any action or other matter specified in paragraph (b)(1) of this section to all notice group representatives and all other partners except partners—

(i) Whose partnership items become nonpartnership items before the expiration of the period specified in paragraph (b)(3) of this section for furnishing that information,

(ii) Who are indirect partners and who are not identified to the tax matters partner at least 30 days before the tax matters partner is required to provide the information,

(iii) Who are treated as partners solely by virtue of § 301.6231(a)(2)–1,

(iv) Who are members of a notice group as of the date on which the tax matters partner takes that action or receives information with respect to that matter (see § 301.6223(b)–1(c)(4) for the date on which a partner becomes a member of a notice group), or

(v) Who have already received information with respect to the action or matter from any other person.

(3) *Time for furnishing information.* The tax matters partner shall furnish information with respect to an action or other matter described in paragraph (b)(1) of this section within 30 days of taking the action or receiving information with respect to that matter.

§ 301.6223(h)–1 Responsibilities of pass-thru partner.

The pass-thru partner shall, within 30 days of receiving notice or any other information regarding a partnership proceeding from the Internal Revenue Service, the tax matters partner, or another pass-thru partner, forward a copy of that notice or information to the person or persons holding an interest through the pass-thru partner in the profits or losses of the partnership for the partnership taxable year to which the notice or information relates. In the case of a pass-thru partner which is a partnership within the meaning of section 6231(a)(1), the tax matters partner of such partnership shall forward copies of such notice or information to the partners of such partnership.

§ 301.6224(a)–1 Participation in administrative proceedings.

Every partner in the partnership, including an indirect partner, has the right to participate in any phase of administrative proceedings. However, except as provided in section 6223 and the regulations thereunder, neither the Service nor the tax matters partner is required to provide notice of any proceeding to partners. Consequently, a partner who wishes, for example, to be present during a preliminary discussion between an examining agent and the tax matters partner should make special arrangements with the tax matters partner to obtain information as to the time and place of the discussion. The Service and the tax matters partner will determine the time and place for all administrative proceedings. Arrangements will generally not be changed merely for the convenience of another partner.

§ 301.6224(b)–1 Partner may waive rights.

(a) *In general.* A partner may at any time waive any right that that partner has or any restriction on action by the Service under subchapter C of chapter 63 of the Code.

(b) *Form and manner of making waiver.* The waiver described in paragraph (a) of this section shall be made by a written statement. If the Service furnishes a form to be used for this purpose, the partner may make the waiver by completing the form in accordance with the instructions accompanying that form. If such a form is not furnished, the statement shall—

(1) Be clearly identified as a waiver under section 6224(b),

(2) Identify the partner and the partnership by name, address, and taxpayer identification number,

(3) Specify the right or restriction being waived and the taxable year(s) to which the waiver applies,

(4) Be signed by the partner making the waiver, and

(5) Be filed with the service center with which the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed such notice.

§ 301.6224(c)–1 Tax matters partner may bind nonnotice partners.

(a) *In general.* In the absence of a showing of fraud, malfeasance, or

misrepresentation of fact, if the tax matters partner enters into a settlement agreement with the Service and expressly states that that agreement shall be binding on the other partners, that agreement shall be binding on all partners except those who—

(1) Are, as of the day on which the agreement is entered into, either notice partners or members of a notice group (see § 301.6223(b)–1 (c)(4) for the date on which a partner becomes a member of a notice group), or

(2) Have, at least 30 days before the day on which the agreement is entered into, filed with the Service the statement described in paragraph (c) of this section.

(b) *Indirect partners*—(1) *In general.* If, under paragraph (a) of this section, a pass-thru partner is not bound by an agreement entered into by the tax matters partner, all indirect partners holding an interest in the partnership through that pass-thru partner shall not be bound by that agreement. If, however, the pass-thru partner is bound by an agreement entered into by the tax matters partner, paragraph (a) of this section shall be applied separately to each indirect partner holding an interest in the partnership through the pass-thru partner to determine whether the indirect partner is also bound by the agreement.

(2) *Example.* The following example illustrates the principles set forth in this section.

Example. Partnership P has over 100 partners. Partnership J is a partner in partnership P with a profits interest of less than 1 percent. Partnership J has three partners, A, B, and C. A is a member of a notice group with respect to partnership P, but B and C are not. On July 1, 1985, B filed the statement described in paragraph (b) of this section not to be bound by any settlement agreement entered into by the tax matters partner of partnership P. On August 1, 1985, the tax matters partner of partnership P enters into a settlement agreement with the Service and states that the agreement is binding on other partners as provided in section 6224(c)(3). Since partnership J is bound by the settlement agreement, paragraph (a) of this section is applied separately to each of the indirect partners to determine whether they are bound. A is not bound by the agreement because he was a member of a notice group on the day the agreement was entered into and B is not bound because she filed the statement not to be bound at least 30 days before the agreement was entered into. C is bound by the settlement agreement.

(c) *Statement not to be bound*—(1) *Contents of statement.* The statement referred to in paragraph (a)(2) of this section shall—

(i) Be clearly identified as a statement to deny settlement authority to the tax matters partner under section 6224(c)(3)(B),

(ii) Identify the partner and partnership by name, address, and taxpayer identification number,

(iii) Specify the taxable year or years to which the statement applies, and

(iv) Be signed by the partner filing the statement.

(2) *Place where statement is to be filed.* The statement described in paragraph (c)(1) of this section generally shall be filed with the service center with which the partnership return is filed. However, if the partner knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement shall be filed with the Internal Revenue Service office that mailed that notice.

(3) *Consolidated statements.* The statement described in paragraph (c)(1) of this section may be filed with respect to more than one partner if the requirements of that paragraph (c)(1) (including signatures) are satisfied with respect to each partner.

§ 301.6224(c)–2 Pass-thru partner binds indirect partners.

(a) *Pass-thru partner binds unidentified indirect partners*—(1) *In general.* If a pass-thru partner enters into a settlement ageement with the Service with respect to partnership items, that agreement binds all indirect partners holding an interest in that partnership through the pass-thru partner except those indirect partners who have been identified as provided in section 6223(c)(3) and § 301.6223(c)–1 at least 30 days before the date on which the agreement is entered into. However, if, in addition to the interest in the partnership held through the pass-thru partner entering into a settlement agreement, an indirect partner holds a separate interest in that partnership, either directly or indirectly through a different pass-thru partner, the indirect partner shall not be bound by that settlement agreement with respect to the interests held directly or indirectly through a pass-thru partner other than the pass-thru partner entering into the settlement agreement.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. Partnership J is a partner in partnership P. C is a partner in J but has not been identified as provided in section 6223(c)(3) and § 301.6223(c)–1. The only interest that C holds in P is through J. The tax matters partner of J enters into a settlement agreement with the Service with respect to partnership items arising from P. C is bound by the settlement agreement entered into by the tax matters partner of J.

(b) *Person in pass-thru partner authorized to enter into settlement agreement that binds indirect partners.* In the case of a pass-thru partner that is—

(1) A partnership within the meaning of section 6231(a)(1), the tax matters partner of that partnership;

(2) A partnership other than a partnership described in paragraph (b)(1) of this section, any general partner of that partnership;

(3) An S corporation subject to the provisions of subchapter D of chapter 63 of the Code, the tax matters person of that S corporation;

(4) An S corporation other than an S corporation described in paragraph (b)(3) of this section, any officer of that S corporation; or

(5) A trust, estate, or nominee, any person authorized in writing to act on behalf of that trust, estate, or nominee may enter into a settlement agreement with the Service on behalf of its respective entity that would bind the unidentified indirect partners that hold a partnership interest through the pass-thru partner.

§ 301.6224(c)–3 Consistent settlements.

(a) *In general.* If the service enters into a settlement agreement with any partner with respect to partnership items, the Service shall offer to any other partner who so requests in accordance with paragraph (c) of this section settlement terms which are consistent with those contained in the settlement agreement entered into.

(b) *Requirements for consistent settlements.* "Consistent" settlement terms are those based on the same determinations with respect to partnership items. Settlements with respect to partnership items shall be self-contained; thus, a concession by one party with respect to a partnership item may not be based upon a concession by the other party with respect to a nonpartnership item. Settlements shall be comprehensive, that is, a settlement may not be limited to selected items. The requirement for consistent settlement terms applies only if—

(1) The items were partnership items for the partner entering into the original settlement immediately before the original settlement, and

(2) The items are partnership items for the partner requesting the consistent settlement at the time the partner files the request.

(c) *Time and manner of requesting consistent settlements*—(1) *In general.* A partner desiring settlement terms consistent with the terms of any

settlement agreement entered into between any other partner and the Service shall submit a written statement to the Internal Revenue Service office that entered into the settlement.

(2) *Contents of statement.* Except as otherwise provided in instructions to the taxpayer from the Service, the written statement described in paragraph (c)(1) of this section shall—

(i) Identify the statement as a request for consistent settlement terms under section 6224(c)(2),

(ii) Contain the name, address, and taxpayer identification number of the partnership and of the partner requesting the settlement offer (and, in the case of an indirect partner, of the pass-thru partner through which the indirect partner holds an interest,

(iii) Identify the earlier agreement to which the request refers, and

(iv) Be signed by the partner making the request.

(3) *Time for filing request.* The statement shall be filed not later than the later of—

(i) The 150th day after the day on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, or

(ii) The 60th day after the day on which the settlement was entered into.

(d) *Examples.* The following examples illustrate the principles set out in this section.

Example (1). The Service seeks to disallow a $100,000 loss reported by Partnership P. The Service agrees to a settlement with X, a partner in P, in which the Service allows 60 percent of the loss and accepts the treatment of all other partnership items on the partnership return. Partner Y, which owns a 10 percent interest in the partnership, requests settlement terms which are consistent with the settlement made between X and the Service. The items are partnership items for X immediately before X enters into the settlement agreement and partnership items for Y at the time of the request. The Service must offer Y a settlement agreement allowing a $6,000 loss and otherwise reflecting the treatment of partnership items on the partnership return.

Example (2). F files inconsistently with partnership P and reports the inconsistency. The Service notifies F that it will treat all partnership items arising from P as nonpartnership items with respect to F. Later, the Service enters into a settlement with F on these items. The Service is not required to offer the other partners of P settlement terms consistent with the settlement reached between F and the Service because at the time of the settlement the items arising from P are no longer partnership items with respect to F.

Example (3). G, a partner in Partnership P, filed suit under section 6228(b) after the Service failed to allow an adminsitrative adjustment request with respect to a partnership item arising from P for a taxable year. Under section 6231 (b)(1)(B), the partnership items of G for the partnership taxable year became nonpartnership items as of the date the suit was filed. After G filed suit, another partner and the Service entered into a settlement agreement with respect to items arising from P in that year. G is not entitled to consistent settlement terms because the items arising from P are no longer partnership items with respect to G.

§ 301.6226(a)–1 Principal place of business of partnership.

(a) *In general.* The principal place of business of a partnership for purposes of determining the appropriate district court in which a petition for a readjustment of partnership items may be filed is its principal place of business as of the date the petition is filed.

(b) *Example.* The provisions of paragraph (a) of this section may be illustrated by the following example:

Example. The principal place of business of partnership A on the day that the notice of the final partnership administrative adjustment was mailed to the tax matters partner of A was Cincinnati, Ohio. However, by the day on which a petition seeking judicial review of that adjustment was filed, A had moved its principal place of business to Louisville, Kentucky. For purposes of section 6226(a)(2), A's principal place of business is Louisville.

§ 301.6226(b)–1 5-percent group.

All members of a 5-percent group shall join in filing any petition for judicial review. The designation of a partner as a representative of a notice group does not authorize that partner to file a petition for a readjustment of partnership items on behalf of the notice group.

§ 301.6226(e)–1 Jurisdictional requirement for bringing an action in District Court or Claims Court.

(a) *Amount to be deposited*—(1) *In general.* The jurisdictional amount that the filing partner (or, in the case of a petition filed by a 5-percent group, each member of the group) shall deposit is the amount by which the tax liability of the partner would be increased if the treatment of the partnership items on the partner's return were made consistent with the treatment of partnership items on the partnership return, as adjusted by the notice of final partnership administrative adjustment. The partner is not required to pay other outstanding liabilities in order to deposit a jurisdictional amount.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. A files a petition for readjustment of partnership items in the Claims Court. A's tax liability would be increased by $4,000 if partnership items on his return were conformed to the partnership return, as adjusted by the notice of final partnership administrative adjustemnt. A has an unpaid liability of $10,000 attributable to nonpartnership items. A is required to deposit $4,000 in order to satisfy the jurisdictional requirement.

(b) *Deposit taken into account in computing interest.* The amount deposited is treated as a payment of tax for purposes of chapter 67 (relating to interest). Thus, the period of deposit will be treated as a period of payment for purposes of determining the interest due on any overpayment or underpayment and computing any penalty under section 6653 (a)(2) or (b)(2).

(c) *Deposit generally not treated as payment of tax.* Except as provided in paragraph (b) of this section, an amount deposited under section 6226(e) shall not be treated as payment of tax. Thus, the Service may proceed against the depositor for a deficiency based on nonpartnership items without regard to this deposit.

(d) *Amount deposited may be applied against assessment.* If the restriction on assessment provided under section 6225(a) lapses with respect to a deficiency attributable to partnership items for a partnership taxable year while an amount is on deposit under section 6226(e) in connection with a petition relating to those items, the Service may apply the amount deposited against any such deficiency that is assessed.

§ 301.6226(f)–1 Scope of judicial review.

(a) *In general.* A court reviewing a notice of final partnership administrative adjustment has jurisdiction to determine all partnership items for the taxable year to which the notice relates and the proper allocation of such items among the partners. Thus, the review is not limited to the items adjusted in this notice.

(b) *Example:* The provisions of paragraph (a) of this section may be illustrated by the following example.

Example: The Service issues a notice of final partnership administrative adjustment with respect to Partnership ABC in which the only item adjusted is depreciation. A petition for judicial review of that notice is filed. During the judicial proceeding, a partner of ABC, in accordance with the applicable court rules, raises an issue relating to the treatment of intangible drilling costs. The court reviewing the notice has jurisdiction to determine the intangible drilling cost issue as well as the depreciation issue.

§ 301.6227(b)–1 Administrative adjustment request by the tax matters partner on behalf of the partnership.

(a) *In general.* A request for an administrative adjustment filed by the tax matters partner on behalf of the partnership shall be filed on the form prescribed by the Service for that purpose in accordance with the instructions accompanying that form. Except as otherwise provided in the instructions accompanying that form, the request shall be—

(1) Filed with the service center where the original partnership return was filed,

(2) Signed by the tax matters partner, and

(3) Accompanied by revised schedules showing the effects of the proposed changes on each partner and an explanation of the changes.

(b) *Denied request for treatment as a substituted return remains administrative adjustment request.* An administrative adjustment request filed by the tax matters partner on behalf of the partnership for which substituted return treatment is requested but not granted remains an administrative adjustment request. Thus, for example, the tax matters partner may file suit under section 6228(a) if the Service fails to take timely action on the request.

§ 301.6227(c)–1 Administrative adjustment request filed on behalf of a partner.

A request for an administrative adjustment on behalf of a partner shall be filed on the form prescribed by the Service for that purpose in accordance with the instructions accompanying that form. Except as otherwise provided in the instructions accompanying that form, the request shall—

(a) Be filed in duplicate, the original copy filed with the partner's amended income tax return (on which the partner computes the amount by which the partner's tax liability should be adjusted if the request if granted) and the other copy filed with the service center where the partnership return is filed,

(b) Identify the partner and the partnership by name, address, and taxpayer identification number,

(c) Specify the partnership taxable year to which the administrative adjustment request applies,

(d) Relate only to partnership items, and

(e) Relate only to one partnership and one partnership taxable year.

§ 301.6229(b)–1 Extension by agreement.

Any partnership may authorize any person to extend the period described in section 6229(a) with respect to all partners by filing a statement to that effect with the service center with which the partnership return is filed. The statement shall—

(a) Provide that it is an authorization for a person other than the tax matters partner to extend the assessment period with respect to all partners,

(b) Identify the partnership and the person being authorized by name, address, and taxpayer identification number,

(c) Specify the partnership taxable year or years for which the authorization is effective, and

(d) Be signed by all persons who were general partners at any time during the year or years for which the authorization is effective.

§ 301.6229(e)–1 Information with respect to unidentified partner.

A partner who is not properly identified on the partnership return (including an indirect partner) remains an unidentified partner for purposes of section 6229(e) until identifying information is furnished as provided in § 301.6223(c)–1.

§ 301.6230(b)–1 Request that correction not be made.

The request that a correction not be made under section 6230(b)(2) shall be in writing and shall—

(a) State that it is a request that a correction not be made under section 6230(b),

(b) Identify the partnership and the partner filing the request by name, address, and taxpayer identification number,

(c) Be signed by the partner filing the request, and

(d) Be filed with the Internal Revenue Service office that provided the notice of the correction of the error.

§ 301.6230(c)–1 Claim arising out of erroneous computation, etc.

A claim for refund under section 6230 (c) shall state the grounds for the claim and shall be filed with the service center with which the partner's return is filed.

§ 301.6230(e)–1 Tax matters partner required to furnish names.

(a) *In general.* If a notice of the beginning of an administrative proceeding is mailed to the tax matters partner with respect to any partnership taxable year, the tax matters partner shall furnish to the Internal Revenue Service office that issued the notice the name, address, profits interest, and taxpayer identification number of each person who was a partner in the partnership at any time during that taxable year if that information was not provided on the partnership return filed for that year.

(b) *Revised or additional information.* If the tax matters partner discovers that any information furnished to the Service on the partnership return or under paragraph (a) of this section was incorrect or incomplete, the tax matters partner shall furnish revised or additional information to the Service within 15 days of discovering that the information furnished to the Service was incorrect or incomplete.

(c) *Information required with respect to indirect partners.* The requirements of this section for identifying information apply with respect to indirect partners to the extent that the tax matters partner has such information.

§ 301.6231(a)(1)–1 Exception for small partnerships.

(a) *In general.* For purposes of the exception for small partnerships under section 6231(a)(1)(B) the rules contained in this section shall apply.

(1) *"10 or fewer."* The "10 or fewer" limitation described in section 6231(a)(1)(B)(i)(I) is applied to the number of natural persons (other than nonresident aliens) and estates that were partners at any one time during the partnership taxable year. Thus, for example, a partnership that at no time during the taxable year had more than 10 partners may be treated as a small partnership even if, because of transfers of interests in the partnership, 11 or more natural persons or estates owned interests in the partnership for some portion of the taxable year. For purposes of section 6231(a)(1)(B) and this section, a husband and wife (and their estates) are treated as one person.

(2) *Pass-thru partner.* The exception provided in section 6231(a)(1)(B) does not apply to a partnership for a taxable year if any partner in the partnership during that taxable year is a pass-thru partner. For purposes of this paragraph (a)(2), an estate shall not be treated as a pass-thru partner.

(3) *"Same share."* The requirement of section 6231(a)(1)(B)(i)(II) is satisfied for a taxable year if during all periods within that taxable year each partner's share of each of the partnership items specified in § 301.6231(a)(3)–1(a)(1) (i) through (iv) is the same as that partner's share of each of the other partnership items specified in that section during that period (even though the partner's share of all such specified partnership items changes from period to period within that taxable year). Thus, a partner whose share of all such specified partnership items changes as a result of a sale or redemption of a partnership interest (or portion thereof) or a contribution of cash or property to

the partnership during the partnership taxable year shall satisfy the same share requirement if during the period before the sale, redemption, or contribution the partner's share of each specified partnership item is the same as all other specified partnership items and during the period after the sale, redemption, or contribution the partner's share of each specified partnership item is the same as all other specified partnership items. For purposes of section 6231(a)(1)(B)(i)(II) and this section, if each partner's share of each partnership item would be the same as his or her share of every other item but for allocations made under section 704 (c) or allocations made under similar principles in accordance with applicable regulations the requirement of section 6231(a)(1)(B)(i)(II) shall be considered satisfied. Similarly, special basis adjustments pursuant to sections 754, 743, and 734 shall not be taken into account in determining whether the "same share" requirement is met.

(4) *Determination made annually.* The determination of whether a partnership meets the requirements for the exception for small partnerships under section 6231(a)(1)(B) and this paragraph (a) shall be made with respect to each partnership taxable year. Thus, a partnership that does not qualify as a small partnership in one taxable year may qualify as a small partnership in another taxable year if the requirements for the exception under section 6231(a)(B) and this paragraph (a) are met with respect to that other taxable year.

(b) *Election to have subchapter C of chapter 63 apply*—(1) *General.* Any partnership that meets the requirements set forth in section 6231(a)(1)(B) of the Code and paragraph (a) of this section (relating to the exception for small partnerships) may elect under paragraph (b)(2) of this section to have the provisions of subchapter C of chapter 63 of the Code apply with respect to that partnership.

(2) *Method of election.* A partnership shall make the election described in paragraph (b)(1) of this section by attaching a statement to the partnership return for the first taxable year for which the election is to be effective. The statement shall be identified as an election under section 6231(a)(1)(B)(ii), shall be signed by all persons who were partners of that partnership at any time during the partnership taxable year to which the return relates, and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return. However, for partnership taxable years for which a partnership return is to be filed before 90 days after the date final regulations under this section are published in the **Federal Register** the partnership may file the statement described in the preceding sentence on or before the date which is one year before the date specified in section 6229(a) for the expiration of the period of limitations with respect to that partnership (determined with regard to extensions of that period under section 6229(b)).

(3) *Years covered by election.* The election shall be effective for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with the consent of the Commissioner.

§ 301.6231(a)(2)–1 Persons whose tax liability is determined indirectly by partnership items.

(a) *Spouse filing joint return with individual holding separate interest*—(1) *In general.* Except as otherwise provided in this paragraph (a), a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as a partner for purposes of subchapter C of chapter 63 of the Code. Thus, the spouse who files a joint return with a partner will be permitted to participate in administrative and judicial proceedings.

(2) *Counting rules.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall not be counted as a partner for purposes of applying section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(1)(B) (relating to the exception for small partnerships).

(3) *Notice rules*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, for purposes of subchapter C of chapter 63 of the Code, a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as receiving any notice received by the individual holding the separate interest.

(ii) *Spouse identified on partnership return or by statement.* Paragraph (a)(3)(i) of this section shall not apply to a spouse who files a joint return with an individual holding a separate interest in the parternship if that spouse:

(A) Is identified on the partnership return; or

(B) Is identified as a partner entitled to notice as provided in § 301.6223(c)–1(b).

(4) *Cross-reference.* See § 301.6231(a)(12)–1 for special rules relating to spouses holding a joint interest in a partnership.

(b) *Shareholder of C corporation.* A shareholder of a C corporation (as defined in section 1361(a)(2)) is not a partner in a partnership merely because the C corporation is a partner in that partnership.

§ 301.6231(a)(5)–1 Definition of affected item.

(a) *In general.* The term "affected item" includes items unrelated to the items reflected on the partnership return (for example, an item, such as the threshold for the medical expense deduction under section 213, that varies if there is a change in an individual partner's adjusted gross income).

(b) *Partner's basis in his partnership interest.* A partner's basis in his interest in the partnership is an affected item to the extent it is not a partnership item.

(c) *At-risk limitation.* The application of the at-risk limitation under section 465 to a partner with respect to a loss flowing from a partnership is an affected item to the extent it is not a partnership item.

(d) *Addition to tax or additional amount*—(1) *In general.* The term "affected item" includes any addition to tax or additional amount provided by subchapter A of chapter 68 of the Internal Revenue Code of 1954 to the extent provided in this paragraph (d).

(2) *Addition to tax or additional amount without floor.* In the case where an addition to tax or additional amount that does not contain a floor (that is, a threshold amount of underpayment or understatement necessary before the imposition of the addition to tax or additional amount) is imposed on a partner as the result of an adjustment to a partnership item, the term "affected item" shall include the addition to tax or additional amount computed with reference to the entire underpayment or understatement.

(3) *Addition to tax or additional amount containing floor*—(i) *Floor exceeded prior to adjustment.* In the case where a partner would have been subject to an addition to tax or additional amount that contains a floor in the absence of an adjustment to a partnership item (that is, the partner's understatement or underpayment exceeded the floor even without an adjustment to a partnership item) the term "affected item" shall include only the addition to tax or additional amount computed with reference to the partnership item (or affected item).

(ii) *Floor not exceeded prior to adjustment.* In the case of an addition to tax or additional amount that contains a floor, if the taxpayer's understatement or underpayment does not exceed the

floor prior to an adjustment to a partnership item but does so after such adjustment, the term "affected item" shall include the addition to tax or additional amount computed with reference to the entire underpayment or understatement.

(4) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples:

Example (1). A, a partner of P, had an aggregate underpayment of $1000 of which $100 is attributable to an adjustment to partnership items. A is negligent in reporting the partnership items. The addition to tax for negligence computed with reference to the entire $1000 underpayment is an affected item.

Example (2). B, a partner in partnership P, understated his income tax liability attributable to nonpartnership items by $6,000. An adjustment to a partnership item resulting from a partnership proceeding increased B's income tax by an additional $2,000. Prior to the adjustment, B would have been subject to the addition to tax section 6661 with respect to the $6,000 understatement. The addition to tax under section 6661 computed with reference to the $2,000 increase is an affected item. The addition to tax computed with reference to the $6,000 pre-existing understatement is not an affected item.

Example (3). C, a partner in partnership P, understated his income tax liability attributable to nonpartnership items by $4,000. As result of adjustment to partnership items, that understatement is increased to $10,000. Prior to the adjustment, C would not have been subject to any addition to tax under section 6661. The section 6661 addition to tax computed with reference to the entire $10,000 underpayment is an affected item.

§ 301.6231(a)(6)–1 Computational adjustments.

(a) *In general.* A change in the tax liability of a partner to properly reflect the treatment of a partnership item under subchapter C of chapter 63 of the Code is made through a computational adjustment may include a change in tax liability that reflects a change in an affected time where that change is necessary to properly reflect the treatment of a partnership item. However, if a change in a partner's tax liability cannot be made without making one or more partner-level determinations, that portion of the change in tax liability attributable to the partner-level determinations shall be made under the provisions of subchapter B of chapter 63 of the Code (relating to deficiency procedure). Thus, changes in a partner's tax liability with respect to affected items that do not require partner-level determinations (such as the threshold amount of medical deductions under section 213 that changes as the result of determinations made at the partnership level) are included in a computational adjustment. However, changes in a partner's tax liability with respect to affected items that require partner-level determinations (such as a partner's at-risk amount that depends upon the source from which the partner obtained the funds that the partner contributed to the partnership) are not included in a computational adjustment.

(b) *Interest.* A computational adjustment includes any interest due with respect to any underpayment or overpayment of tax attributable to adjustments to reflect properly the treatment of partnership items.

(c) *Addition to tax or additional amount.* A computational adjustment shall not include an addition to tax or additional amounts. Regardless of whether an addition to tax or additional amount is an affected item within the meaning of section 6231(a)(5) and § 301.6231(a)(5)–1, the addition to tax or additional amount shall be subject to the provisions of subchapter B of chapter 63 of the Code (relating to deficiency procedures). See section 6229(a) for the period of limitations for making assessments with respect to affected items.

§ 301.6231(a)(7)–1 Designation of tax matters partner.

(a) *In general.* A partnership may designate a partner as its tax matters partner for a specific taxable year only as provided in this section. Similarly, the designation of a partner as the tax matters partner for a specific taxable year may be terminated only as provided in this section.

(b) *Person who may be designated tax matters partner*—(1) *General reqirement.* A person may be designated as the tax matters partner of a partnership for a taxable year only if that person—

(i) Was a general partner in the partnership at some time during the taxable year for which the designation is made, or

(ii) Is a general partner in the partnership as of the time the designation is made.

(2) *Limitation on designation of tax matters partner who is not a United States person.* If any United States person would be eligible under paragraph (a) of this section to be designated as the tax matters partner of a partnership for a taxable year, no person who is not a United States person may be designated as the tax matters partner of the partnership for that year without the consent of the Commissioner. For the definition of the term "United States person," see section 7701(a)(30).

(c) *Designation of tax matters partner at time partnership return is filed*—(1) *If the form provided for the partnership return contains space for designation.* If the form provided for the partnership return for a taxable year contains a space for the designation of a tax matters partner, the partnership may designate a tax matters partner for that partnership taxable year on the partnership return in accordance with the instructions for that form.

(2) *If form does not contain space for designation.* If the form provided for the partnership return for a taxable year does not contain a space for the designation of a tax matters partner, the partnership may make the designation by attaching a statement to the partnership return for that year, filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return. The statement shall—

(i) Identify the partnership and the designated tax matters partner by name, address, and taxpayer identification number,

(ii) Declare that it is a designation of a tax matters partner for the taxable year to which the return relates, and

(iii) Be signed by the partner signing the partnership return.

(d) *Certification by current tax matters partner of selection of successor.* If a partner properly designated as the tax matters partner of a partnership for a partnership taxable year under this section certifies that another partner has been selected as the tax matters partner of the partnership for that taxable year, that other partner is thereby designated as the tax matters partner for that year. The current tax matters partner shall make the certification by filing with the service center with which the partnership return is filed a statement that—

(1) Identifies the partnership, the partner filing the statement, and the successor tax matters partner by name, address, and taxpayer identification number,

(2) Specifies the partnership taxable year to which the designation relates,

(3) Declares that the partner filing the statement has been properly designated as the tax matters partner of the partnership for the partnership taxable year and that that designation is in effect immediately before the filing of the statement,

(4) Certifies that the other named partner has been selected as the matters partner of the partnership for that taxable year in accordance with the partnership's procedure for making that selection, and

(5) Is signed by the partner filing the statement.

(e) *Designation by general partners with majority interest.* The partnership may designate a tax matters partner for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. The statement shall—

(1) Identify the partnership and the designated partner by name, address, and taxpayer identification number,

(2) Specify the partnership taxable year to which the designation relates,

(3) Declare that it is a designation of a tax matters partner for the taxable year to which the designation relates,

(3) Declare that it is a designation of a tax matters partner for the taxable year specified, and

(4) Be signed by persons who were general partners at the close of the year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all general partners as of the close of that taxable year. For purposes of this paragraph (e)(4), all limited partnership interests held by general partners shall be included in determining the aggregate interest in partnership profits held by such general partners.

(f) *Designation by partners with majority interest under certain circumstances*—(1) *In general.* A tax matters partner may be designated for a partnership taxable year under this paragraph (f) only if, at the time the designation is made, each partner who was a general partner at the close of such partnership taxable year is described in one or more of the following subdivisions of this paragraph (f)(1).

(i) The general partner is dead, or, if the general partner is an entity, has been liquidiated or dissolved;

(ii) The general partner has been adjudicated by a court of competent jurisdiction to be no longer capable of managing his or her person or estate;

(iii) The general partner's partnership items have become nonpartnership items under section 6231(b); or

(iv) The general partner is no longer a partner in the partnership.

(2) *Method of making designation.* A tax matters partner for a partnership taxable year may be designated under this paragraph (f) at any time after the filing of the partnership return for such taxable year by filing a written statement with the service center with which the partnership return was filed. The statement shall—

(i) Identify the partnership and the designated tax matters partner by name, address, and taxpayer identification number,

(ii) Specify the partnership taxable year to which the designation relates,

(iii) Declare that is a designation of a tax matters partner for the partnership taxable year specified, and

(iv) Be signed by persons who were partners at the close of such taxable year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all partners as of the close of such taxable year.

(g) *Designation of alternate tax matters partner.* If an individual is designated as the tax matters partner of a partnership under paragraph (c), (d), (e), or (f) of this section, the document by which that individual is designated may also designate an alternate tax matters partner who will become tax matters partner upon the occurance of one or more of the events described in paragraph (l)(1) or (2)of this section. The person designated as the alternate tax matters partner becomes the tax matteres partner as of the time the designation of the tax matters partner is terminated under paragraph (l)(1) or (2) of this section. The designation of a person as the alternate tax matters partner shall have no effect in any other case.

(h) *Prior designations superseded.* A designation of a tax matters partner for a partnership taxable year under paragraphs (d), (e), or (f) of this section shall supersede all prior designations of a tax matters partner for that year, including a prior designation of an alternate tax matters partner under paragraph (g) of this section.

(i) *Resignation of designated tax matters partner.* A prson designated as the tax matters partner of a partnership under this section may resign at any time by a written statement to that effect. The statement shall specify the partnership taxable year to which the resignation relates and shall identify the partnership and the tax matters partner by name, address, and taxpayer identification number. The statement shall also be signed by the resigning tax matters partner and shall be filed with the service center with which the partnership return was filed.

(j) *Revocation of designation.* The partnership may revoke the designation of the tax matters partner for a partnership taxable year at any time after the filing of a partnership return for that taxable year by filing a statement with the service center with which the partnership return was filed. The statement shall—

(1) Identify by name, address, and taxpayer identification number the partnership and the general partner whose designation as tax matters partner is being revoked,

(2) Specify the partnership taxable year to which the revocation relates,

(3) Declare that it is a revocation of a designation of the tax matters partner for the taxable year specified, and

(4) Be signed by the persons described in paragraph (e)(4) of this section, or, if at the time that the revocation is made, each partner who was a general partner at the close of the partnership taxable year to which the revocation relates is described in one or more of subdivisions (i) through (iv) of paragraph (f)(1) of this section, by the persons described in paragraph (f)(2)(iv) of this section.

(k) *When designation, etc., becomes effective*—(1) *In general.* Except as otherwise provided in paragraph (k)(2) of this section, a designation, resignation, or revocation provided for in this section becomes effective on the day that the statement required by the applicable paragraph of this section is filed.

(2) *Notice of proceeding mailed.* If a notice of beginning of an administrative proceeding with respect to a partnership taxable year is mailed before the date on which a statement of designation, resignation, or revocation provided for in this section with respect to that taxable year is filed, the Service is not required to give effect to such designation, resignation, or revocation until 30 days after the statement is filed.

(l) *Termination of designation.* A designation of a tax matters partner for a taxable year under this section shall remain in effect until—

(1) The death of the designated tax matters partner,

(2) An adjudication by a court of competent jurisdiction that the individual designated as the tax matters partner is no longer capable of managing the individual's person or estate,

(3) The liquidation or dissolution of the tax matters partner, if the tax matters partner is an entity,

(4) The partnership items of the tax matters partner become nonpartnership items under section 6231(c) (relating to special enforcement areas), or

(5) The day on which—

(i) The resignation of the tax matters partner under paragraph (i) of this section,

(ii) A subsequent designation under paragraph (d), (e), or (f) of this section, or

(iii) A revocation of the designation under paragraph (j) of this section becomes effective.

The termination of the designation of a partner as the tax matters partner under this paragraph (l) does not affect the validity of any action taken by that partner as tax matters partner before the designation is terminated. For example, if that tax matters partner had previously consented to an extension of the period for assessments under section 6229(b)(1)(B), that extension remains valid even after termination of the designation.

(m) *Tax matters partner where no partnership designation made*—(1) *In general.* The tax matters partner for a partnership taxable year shall be determined under this paragraph (m) if:

(i) The partnership has not designated a tax matters partner under this section for that taxable year; or

(ii) The partnership has designated a tax matters partner under this section for that taxable year, that designation has been terminated under paragraph (l) of this section, and the partnership has not made a subsequent designation under this section for that taxable year.

(2) *General partner having the largest profits interest is the tax matters partner.* The tax matters partner for any partnership taxable year to which this paragraph (m) applies is the general partner having the largest profits interest in the partnership at the close of that taxable year (or where there is more than one such partner, the one of such partners whose name would appear first in an alphabetical listing). For purposes of this paragraph (m)(2), all limited partnership interests held by a general partner shall be included in determining that general partner's profits interest in the partnership.

(3) *Termination of designation.* A designation of a tax matters partner for a partnership taxable year under this paragraph (m) shall remain in effect until the earlier of the occurrence of one or more of the events described in paragraph (l) (1) through (4) or the day on which a designation under paragraph (d), (e), or (f) of this section becomes effective. If a designation of a tax matters partner for a partnership taxable year is terminated under this paragraph (m)(3) and the partnership has not subsequently designated a tax matters partner for that taxable year under paragraph (d), (e), or (f) of this section the tax matters partner for that taxable year shall be determined under paragraph (m)(2) of this section, and, for purposes of applying that paragraph (m)(2), the general partner whose designation was so terminated shall be treated as having no profits interest in the partnership for that taxable year.

§ 301.6231(a)(12)–1 Special rules relating to spouses.

(a) *In general.* For purposes of subchapter C of chapter 63 of the Code, spouses holding a joint interest in a partnership are treated as partners. Thus, both spouses are permitted to participate in administrative and judicial proceedings. The term "joint interest" includes tenancies in common, joint tenancies, tenancies by the entirety, and community property.

(b) *Notice and counting rules*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, for purposes of applying section 6223 (relating to notice to partners of proceedings) and section 6231(a)(1)(B) (relating to the exception for small partnerships), spouses holding a joint interest in a partnership shall be treated as one person. Except as provided in paragraph (b)(2) of this section, the Service or the tax matters partner may send any required notice to either spouse.

(2) *Identified spouse entitled to notice.* For purposes of applying section 6223 (relating to notice to partners of proceeding) for a partnership taxable year, an individual who holds a joint interest in a partnership with his or her spouse who is entitled to notice under section 6223 shall be entitled to receive separate notice under section 6223 if such individual:

(i) Is identified as a partner on the partnership return for that taxable year; or

(ii) Is identified as a partner entitled to notice as provided in § 301.6223(c)–1 (b).

(c) *Cross-reference.* See § 301.6231(a)(2)–1(a) for special rules relating to spouses who file joint returns with individuals holding a separate interest in a partnership.

§ 301.6231(c)–3 Limitation on applicability of §§ 301.6231(c)–4 through 301.6231(c)–8.

A provision of §§ 301.6231(c)–4 through 301.6231(c)–8 shall not apply with respect to partnership items arising in a partnership taxable year if, as of the date on which those items would otherwise begin to be treated as nonpartnership items under that provision—

(a) A notice of final partnership administrative adjustment with respect to those items has been mailed to the tax matters partner, and

(b) Either—

(1) The period during which an action with respect to that final partnership administrative adjustment may be brought under section 6226 has expired and no such action has been brought, or

(2) The decision of the court in an action brought under section 6226 with respect to that final partnership administrative adjustment has become final.

§ 301.6231(c)–4 Termination and jeopardy assessment.

The treatment of items as partnership items with respect to a partner against whom an assessment of income tax under section 6851 (termination assessment) or section 6861 (jeopardy assessment) is made will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending with or within the partner's taxable year for which an assessment of income tax under section 6851 or section 6861 is made shall be treated as nonpartnership items as of the moment before such assessment is made.

§ 301.6231(c)–5 Criminal investigations.

The treatment of items as partnership items with respect to a partner under criminal investigation for violation of the internal revenue laws relating to income tax will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner to which the criminal investigation relates shall be treated as nonpartnership items as of the date on which the partner is notified that he or she is the subject of a criminal investigation and receives written notification from the Service that his or her partnership items shall be treated as nonpartnership items. The partnership items of a partner who is notified that he or she is the subject of a criminal investigation shall not be treated as nonpartnership items under this section unless and until such partner receives written notification from the Service of such treatment.

§ 301.6231(c)–6 Indirect method of proof of income.

The treatment of items as partnership items with respect to a partner whose taxable income is determined by use of an indirect method of proof of income will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the taxable year of the partner for which a deficiency notice

based upn an indirect method of proof of income is mailed to the partner shall be treated as nonpartnership items as of the date on which that deficiency notice is mailed to the partner.

§ 301.6231(c)–7 Bankruptcy and receivership

(a) *Bankruptcy.* The treatment of items as partnership items with respect to a partner named as a debtor in a bankruptcy proceeding will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the bankruptcy proceeding shall be treated as nonpartnership items as of the date the petition naming the partner as debtor is filed in bankruptcy.

(b) *Receivership.* The treatment of items as partnership items with respect to a partner for whom a receiver has been appointed in any receivership proceeding before any court of the United States or of any State or the District of Columbia will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending on or before the last day of the latest taxable year of the partner with respect to which the United States could file a claim for income tax due in the receivership proceeding shall be treated as nonpartnership items as of the date a receiver is appointed in any receivership proceeding before any court of the United States or of any State or the District of Columbia.

§ 301.6231(c)–8 Prompt assessment.

The treatment of items as partnership items with respect to a partner on whose behalf a request for a prompt assessment of tax under section 6501(d) is filed will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, partnership items of such a partner arising in any partnership taxable year ending with or within any taxable year of the partner with respect to which a request for a prompt assessment of tax is filed shall be treated as nonpartnership items as of the date that the request is filed.

§ 301.6231(d)–1 Time for determining profits interest of partners for purposes of sections 6223(b) and 6231(a)(11).

(a) *Partner owns interest at close of year.* For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(11) (relating to 5-percent groups), except as otherwise provided in this section, the profits interest held by a partner, directly or indirectly through one or more pass-thru partners, in a partnership (the "audit partnership") to which suchapter C of chapter 63 of the Code applies shall be determined at the close of the aduit partnership's taxable year.

(b) *Partner does not own interest at close of year.* If the entire direct and indirect interest of a partner in an audit partnership is terminated by virtue of a disposition by such partner of such interest (or by virtue of the disposition of an interest held by one or more pass-thru partners through which the partner holds an interest), then the profits interest of such partner in the audit partnership shall be measured as of the moment before the disposition causing such termination. The preceding sentence shall not apply with respect to a termination if subsequent to such termination and before the close of the audit partnership's taxable year the partner acquires a direct or indirect interest in the audit partnership.

(c) *Disposition of last remaining portion of interest is disposition of entire interest.* If a partner (or a pass-thru partner through which a partner holds an interest) makes several partial dispositions of an interest in an audit partnership during a taxable year of the audit partnership, paragraph (b) of this section will apply with respect to the disposition which causes a termination of the partner's entire direct and indirect interest in the audit partnership.

(d) *No profits interest in certain cases.* If—

(1) The interest of a partner in a partnership is entirely disposed of before the close of the taxable year of the partnership, and

(2) No items of the partnership for that taxable year are required to be taken into account by the partner,

that partner has no profits interest in the partnership for that taxable year. For example, if a partner dies before the close of the taxable year of the partnership, generally no items of the partnership for that taxable year are required to be taken into account on the final return of the deceased partner under § 1.706–1(c)(3); consequently, the deceased partner has no profits interest in the partnership for that taxable year.

(e) *Examples.* The provisions of this section may be illustrated by the following examples. Assume in all examples that there have been no re-acquisitions prior to the close of the audit partnership's taxable year.

Example (1). B holds an interest in partnership P through T, a pass-thru partner. P uses a fiscal year ending June 30 as P's taxable year; B and T use the calendar year as the taxable year. As of the close of P's taxable year ending June 30, 1985, T holds an interest in P and B holds an interest in P through T. The profits interest held by B in P through T for that year is determined as of June 30, 1985.

Example (2). Assume the same facts as in example (1), except that B sold the entire interest that B held in P through T on November 5, 1984. The profits interest held by B in P through T for P's taxable year ending June 30, 1985, is determined as of the moment before the sale on November 5, 1984.

Example (3). C holds an interest in partnership P through T, a pass-thru partner. C, P, and T all use the calendar year as the taxable year. T disposes of T's interest in P on June 5, 1985. The profits interest held by C in P through T for 1985 is determined as of the moment before the disposition on June 5, 1985.

Example (4). Assume the same facts as in example (3), except that C sold her entire interest in T (and, therefore, her entire interest that she held in P through T) on March 15, 1985. The profits interest held by C in P through T for 1985 is determined as of the moment before the sale on March 15, 1985.

Example (5). On January 1, 1985, D held a 2 percent profits interest in partnership P. Both D and P use the calendar year as the taxable year. On August 1, 1985, D transfers three-fourths of D's profits interest in P to E. On September 1, 1985, D sells his remaining .5 profits interest in P to F. For purposes of sections 6223(b) and 6231(a)(11), D had a .5 percent profits interest in P for 1985.

Example (6). Assume the same facts as in example (5), except that on January 1, 1985, D also held a 1 percent profits interest in partnership P through T, a pass-thru partner which also uses the calendar year as the taxable year. In addition to the sale to E on August 1, 1985, D sold a portion of his interest in T on December 1, 1985, such that after the sale, D held a .2 percent profits interest in P through T. D made no other transfers of interests in either P or T. For purposes of sections 6223(b) and 6231(a)(11), D had a .7 percent profits interest in P for 1985.

§ 301.6231(e)–1 Effect of a determination with respect to a nonpartnership item on the determination of a partnership item.

The determination of an item after it has become a nonpartnership item with respect to a partner is not controlling in the determination of that item with respect to other partners. Thus, for example, the determination by a court in a separate proceeding relating to a partner that a certain partnership expenditure was deductible does not bind either the Service or the other partners in a later partnership or other proceeding.

§ 301.6231(e)-2 Judicial decision not a bar to certain adjustments.

A court decision with respect to a partner's income tax liability attributable to nonpartnership items shall not be a bar to further proceedings with respect to that partner's income tax liability if that partner's partnership items become nonpartnership items after the appropriate time to include such nonpartnership items in the earlier court proceeding has passed. Thus, the Service could issue a later deficiency notice for the same taxable year with respect to that partner or that partner could bring a refund suit with respect to those items that have become nonpartnership items.

§ 301.6231(f)-1 Disallowance of losses and credits in certain cases.

(a) *Application of section.* This section applies if—

(1) A partnership, whether domestic or foreign, that is required to file a return under section 6031 for a taxable year fails to file the return within the time prescribed, and,

(2) At any time after the close of that taxable year, either—

(i) The tax matters partner of that partnership resides outside the United States, or

(ii) The books and records of that partnership are maintained outside the United States.

(b) *Computational adjustment permitted if return is not filed after mailing of notice.* Except as otherwise provided in paragraph (c) of this section, if—

(1) This section applies with respect to a partnership for a partnership taxable year,

(2) The Service mails notice to a partner that the losses and credits arising from that partnership for that year will be disallowed to that partner unless the partnership files a return for that year within 60 days after the date on which the notice is mailed, and

(3) The partnership fails to file a return for that year within that 60-day period, the Service may, without conducting a partnership-level proceeding, mail a notice of computational adjustment to that partner to reflect the disallowance of any loss (including a capital loss) or credit arising from that partnership for that year.

(c) *Restriction on notices under paragraph (b).* Neither the notice referred to in paragraph (b)(2) of this section nor the notice of computational adjustment referred to in paragraph (b) of this section may be mailed on a day on which—

(1) The tax matters partner of the partnership resides within the United States, and

(2) The books and records of the partnership are maintained within the United States.

Thus, if this section applies with respect to a partnership for a taxable year solely because the tax matters partner of that partnership resided outside the United States for a period after the close of that taxable year and the tax matters partner later takes up residence within the United States, no notice may be mailed under paragraph (b) of this section while the tax matters partner resides within the United States.

(d) *No disallowance in certain circumstances.* If the person to whom the notice referred to in paragraph (b)(2) of this section establishes to the satisfaction of the Service—

(1) That the losses and credits arising from the partnership for the year are proper, and

(2) That the partner has made a good faith effort to have the partnership file the required return,

the Service may allow the losses and credits in whole or in part.

§ 301.6233-1 Extension to entities filing partnership returns, etc.

(a) *Entities filing a partnership return.* Except as provided in paragraph (d)(1) of this section, the provisions of subchapter C of chapter 63 of the Code ("subchapter C") and the regulations thereunder shall apply with respect to any taxable year of an entity for which such entity files a partnership return as well as to such entity's items for that taxable year and to any person holding an interest in such entity at any time during that taxable year. Any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may include a determination that the entity is not a partnership for such taxable year as well as determinations with respect to all items of the entity which would be partnership items, as defined in section 6231(a)(3) and the regulations thereunder, if such entity had been a partnership in such taxable year (including, for example, any amounts taxable on an entity determined to be an association taxable as a corporation). Thus, a final determination under subchapter C that an entity that filed a partnership return is an association taxable as a corporation will serve as a basis for a computational adjustment reflecting the disallowance of any loss or credit claimed by a purported partner with respect to that entity.

(b) *Entities filing an S corporation return.* Except as provided in paragraph (d)(2) of this section, the provisions of subchapter D of chapter 63 of the Code ("subchapter D") and the regulations thereunder shall apply with respect to any taxable year of an entity for which such entity files a return as an S corporation as well as to such entity's items for that taxable year and to any person holding an interest in such entity at any time during the taxable year. Any final S corporation administrative adjustment or judicial determination resulting from a proceeding under subchapter D with respect to such taxable year may include a determination that the entity is not an S corporation for such taxable year as well as determinations with respect to all items of the entity which would be subchapter S items, as defined in section 6245 and the regulations thereunder, if such entity had been an S corporation for such taxable year (including, for example, any amounts taxable to an entity determined to be taxable as a C corporation).

(c) *Partnership or S corporation return filed but no entity found to exist*—(1) *Partnership return filed.* Paragraph (a) of this section shall apply where a partnership return is filed for a taxable year but it is determined that there is no entity for such taxable year. For purposes of applying paragraph (a) of this section, the partnership return shall be treated as if it was filed by an entity. However, any final partnership administrative adjustment or judicial determination resulting from a proceeding under subchapter C with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(2) *S corporation return filed.* Paragraph (b) of this section shall apply where an S corporation return is filed for a taxable year but is is determined that there is no entity for such taxable year. For purposes of applying paragraph (b) of this section, the S corporation return shall be treated as if it was filed by an entity. However, any final S corporation administrative adjustment or judicial determination resulting from a proceeding under subchapter D with respect to such taxable year may also include a determination that there is no entity for such taxable year.

(d) *Exceptions*—(1) *Partnership proceedings.* Paragraph (a) of this section shall not apply to:

(i) Entities for any taxable year in which such entity would be excepted from the provisions of subchapter C under section 6231(a)(1)(B) and the

regulations thereunder (relating to the exception for small partnerships) if such entity were a partnership for such taxable year, and

(ii) Entities for any taxable year for which a partnership return was filed for the sole purpose of making the election described in section 761(a).

(2) *S corporation proceedings. [Reserved].*

(e) *Effective dates.* Paragraphs (a), (c)(1), and (d)(1) of this section shall apply with respect to any taxable year beginning after September 3, 1982, and with respect to any taxable year beginning on or before and ending after September 3, 1982, if with respect to that taxable year there is an agreement entered into pursuant to section 407(a)(3) of the Tax Equity and Fiscal Responsibility Act of 1982. Paragraphs (b) and (c)(2) of this section shall apply with respect to any taxable year beginning after December 31, 1982.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-8763 Filed 4-15-86; 4:35 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50523A; FRL-3004-1]

Toxic Substances; 4,4'-Methylenebis (2-Chloroaniline); Withdrawal of Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of a proposed rule

SUMMARY: On April 26, 1985, EPA issued a proposed significant new use rule (SNUR) in the **Federal Register** (50 FR 16519) involving the chemical substance 4,4'-methylenebis (2-chloroaniline) (MBOCA, CAS No. 101-14-4). The substance also is called 4,4'-methylenebis (2-chlorobenzenamine). The SNUR proposed that the manufacture of MBOCA in the United States be designated as a significant new use of that substance. Based on public comments to the proposed rule, EPA has decided to issue a final section 8(a) rule rather than a SNUR for prospective manufacturers of MBOCA. The reporting and recordkeeping requirements of the final section 8(a) rule are virtually identical to those that were proposed in the SNUR; the primary change between proposal and promulgation is one of statutory authority. The final section 8(a) rule is published elsewhere in today's issue of the **Federal Register**, and contains a more detailed explanation of the change in statutory authority. Because the proposed SNUR no longer is relevant to this rulemaking, and in order to avoid confusion on the part of the general public, EPA hereby withdraws the proposed SNUR.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

Dated: April 9, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-8603 Filed 4-17-86; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

Freedom of Information Act Regulations

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services (HHS) proposes to revise its regulations implementing the Freedom of Information Act (FOIA). The regulations would be brought up to date in light of HHS experience with FOIA since its enactment in 1967, pertinent judicial interpretations, and recent guidance from the Department of Justice and the Office of Management and Budget. This proposal is prompted also by the Department's commitment to make its regulations more understandable and less burdensome.

DATE: Comments by June 17, 1986.

ADDRESS: Written comments to the Freedom of Information Officer, U.S. Department of Health and Human Services, Room 410-B, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 472-7453. Comments received may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Russell M. Roberts, Freedom of Information Officer, (202) 472-7453.

SUPPLEMENTARY INFORMATION: The Department of Health, Education, and Welfare (now Health and Human Services) issued and adopted Freedom of Information regulations on June 30, 1967. These regulations were amended in 1967, 1968, 1973, 1974, 1975, and 1982. In this proposed rule, the amendments are drawn into one cogent document that updates and restates Department FOIA policies and procedures. Among other things, the rule describes with more detail and greater clarity how the Department interprets the FOIA exemptions to mandatory disclosure of information.

The Department has a history of faithful and continuing compliance with the Freedom of Information Act. We also have a responsibility to protect the integrity of the processes in which FOIA specifically recognizes the need for confidentiality. These include, for example, the predecisional deliberative, the investigative, and the grant and contract award processes. In the policy section, therefore, we explain that we favor a balanced approach to FOIA—one that not only implements the policy of public access to information but also protects the integrity of govenmental processes and recognizes the interests of persons who have submitted records to the Department or who otherwise would be affected by the release of records.

As a result of our experience with FOIA over the past several years, we have given particular attention in Subpart G to Exemptions Four and Five. Exemption Four protects trade secrets and confidential commercial or financial information from mandatory disclosure. Our basic policy under Exemption Four is unchanged. We refer in the proposed regulation to the special rules that already exist concerning the release of records submitted by offerors on contracts. In addition, if requester sue us to obtain records, withheld under Exemption Four, we propose that those who submitted them to us intervene in court. If they fail to do so, we may release the records. This places the contest where it should be—between those who seek such information and those submitted it and consider it confidential and who therefore have the strongest motive for protecting it.

Exemption Five permits the withholding of internal recommendations, opinions, and evaluative materials as well as attorney advice, work product, and other privileged materials. The extended discussion of this in the proposed regulation reemphasizes what the Senate Commitee on the Judiciary stressed in 1965 in favorably reporting FOIA:

It was argued [by agencies], and with merit, that efficiency of Government would be greatly hampered if, with respect to legal or policy matters, all Government agencies were prematurely forced to "operate in a fishbowl." The committee is convinced of the merits of this general proposition, but it has attempted to delimit the exemption as narrowly as consistent with efficient Government operation. (S. Rep. No. 813, 89th Cong. 1st Sess. 1965).

The proposed; regulation would clarify existing Department policy concerning release of certain publicly available documents consisting of pleadings, legal memoranda and other papers filed in court or administrative proceedings. The regulation states that we will not ordinarily provide access to or copies of such material from the files of the Office of the General Counsel but will instead identify the primary source from which they may be obtained. This position was prompted by the inability of the Department's attorneys to maintain the integrity and confidentiality of their work product in circumstances where their litigation files were subject to inspection by requesters, frequently other attorneys engaged in litigation against the Department. The files involved in such requests are often part of ongoing litigation, the defense or prosecution of which might be disrupted if they were subjct to inspection or copying. Furthermore, these litigation files contain the personal notations, comments and legal theories of the Department's attorneys which could not readily be excised or segregated in order to protect the documents' status as attorney work product. The proposed regulation seeks to accommodate the needs of requesters by providing information as to where they may obtain these publicly available documents without compromising the litigation files of the Office of the General Counsel attorneys representing the Department in court and otherwise.

Exemption Seven permits the withholding of investigatory records when one or more of six specified adverse effects would result from improper release. The adverse effects most often considered by the Department are interference with the Department's enforcement proceedings (exemption (7)(A)); unwarranted invasion of personal privacy (exemption (7)(C)); or dislcosure of a confidential source or, under certain conditions, information furnished by the confidential source (exemption (7)(D)).

The new regulation also includes and continues the designation of Freedom of Information Officers, as published in a final rule in the **Federal Register** on May 12, 1982, pp. 20309–20310. These are the Department officials authorized to release or deny records, and to make decisions regarding fee charges, waivers, and reductions.

We propose to modify the fee schedule published as a final rule in the **Federal Register** on Septemer 22, 1982, pp. 41751–41753. While retaining the $.10 per page copy fee, we would change from a search fee of $10 per hour for searches by any employee to a three-level fee that more accurately reflects the actual employee costs of searching for records in this Department. When someone of a General Schedule (GS) grade 1 through 8 conducts the search, the fee would be $10.00 per hour. The fee for searching for requested records when performed by employees in grades GS–9 through GS–14 wouldd be $20.00 per hour. In some instances, it is necessary for more senior staff members to conduct a search for records such as those responsive to a request for discrete portions of voluminous scientific or other complex material. Such searches when performed by grades GS–15 and above would be charged at the rate of $30 per hour.

In developing the three-tiered fee schedule approach, we considered a number of alternatives. These included a fee schedule where we would add overhead costs to average employee costs. This approach may better represent the full cost normally associated with responding to FOIA requests, such as space costs. Although we are not proposing this approach at this time we are soliciting public comment on its feasibility for future adoption. In commenting on this alternative approach thoughts and ideas as to the appropriate percentage of salary to be added on as overhead costs would be welcomed.

In some instances it is necessary for more senior staff members to conduct a search for records such as those responsive to a request for discrete portions of voluminous scientific or other complex material. Such searches when performed by grades GS–15 and above would be charged at the rate of $30 per hour.

This revision also contains a section (Sec. 5.44) on waiver or reduction of fees. The FOIA amendments of 1974 included such a provision, 5 U.S.C. 552(a)(4)(A), requiring waiver or reduction when providing records is considered as "primarily benefiting the general public." We will not apply this standard in a perfunctory or arbitrary manner. Each request will be carefully scrutinized in terms of the criteria set forth in this proposed rule.

The Secretary has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Secretary certifies that this proposed regulation will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354.

The proposed regulation does not require the use of a form. Persons who request records under authority of FOIA may continue to do so by letter, phone, or in person and, therefore, there is no burden imposed on the public, as defined by the Paperwork Reduction Act of 1980, Pub. L. 96–511.

List of Subjects in 45 CFR Part 5

Freedom of Information.

The HHS Freedom of Information regulations, 45 CFR 5, are revised to read as follows:

PART 5—FREEDOM OF INFORMATION ACT REGULATIONS PURSUANT TO 5 U.S.C. 552 (FREEDOM OF INFORMATION ACT)

Subpart A—Basic Policy

Sec.

Subpart B—Definitions

Subpart C—Obtaining a Record

Subpart D—Release and Denial of Records

Subpart E—Fees

Authority: 5 U.S.C. 552.

Subpart A—Basic Policy

§ 5.1 Purpose.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make a FOIA request; who can release records and who can decide not to release; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and then go to court if we refuse to release records.

§ 5.2 Policy.

As a general policy, HHS follows a balanced approach in administering FOIA. We not only recognize the right of public access to information in the possession of the Department, but also protect the integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to the Department or who would otherwise be affected by release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the Freedom of Information Act.

§ 5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must be approved by the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent that they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the **Federal Register**, and you may get copies from our Freedom of Information Officers.

§ 5.4 Relationship between FOIA and the Privacy Act of 1974.

The Freedom of Information Act applies to all requests for records whether or not they are subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act gives you the right of access to most records about you that are in a Privacy Act system of records and retrieved by your name or other personal identifier. When you request information about yourself and the information is in a Privacy Act system of records retrieved under your name/personal identifier, we will examine the request to see if it can be handled under our Privacy Act regulations (45 CFR Part 5b); if not, the request will be considered under the FOIA. If you make a request under the wrong Act, we will place it in the proper channels.

Subpart B—Definitions

§ 5.11 Freedom of Information Act.

As used in this part, "Freedom of Information Act," or "FOIA," means, section 552 of Title 5, United States Code (1982 edition).

§ 5.12 Agency.

As used in this part, "Agency" is any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal government, or any independent regulatory agency. Thus, the Department of Health and Human Services is an agency. A private organization is not an agency, though it may receive Federal financial assistance. Grantee and contractor records are not subject to FOIA unless they are in the possession or under the control of the Department of Health and Human Services or its agents, such as health carriers and intermediaries.

§ 5.13 Department.

"Department" is the Department of Health and Human Services (HHS), which includes the Office of the Secretary, the several Operating Divisions, the Office of Child Support Enforcement, and the Regional Offices.

§ 5.14 Operating Division (OPDIV).

An "Operating Division" is one of the major components of the Department. There are five OPDIVS in HHS: The Social Security Administration (SSA); the Office of Human Development Services (OHDS); the Health Care Financing Administration (HCFA); the Office of Community Services (CCS); and the Public Health Service (PHS). The Public Health Service is further divided into five major components: The Food and Drug Administration (FDA); the National Institutes of Health (NIH); the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA); the Centers for Disease Control (CDC); and the Health Resources and Services Administration (HRSA).

§ 5.15 Staff Division (STAFFDIV).

A "Staff Division" is a major component within the Office of the Secretary, including: The Office of the Assistant Secretary for Legislation (ASL); Assistant Secretary for Management and Budget (ASMB); Assistant Secretary for Public Affairs (ASPA); Assistant Secretary for Planning and Evaluation (ASPE); Assistant Secretary for Personnel Administration (ASPER); General Counsel (GC); Inspector General (IG); Immediate Office of the Secretary (IOS); and Office for Civil Rights (OCR).

§ 5.16 Freedom of Information Officer.

A "Freedom of Information Officer" is an HHS official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

§ 5.17 Information.

"Information" refers to the content of records.

§ 5.18 Records.

(a) "Records" are any handwritten, typed, or printed documents (such as memoranda, studies, writings, drafts, letters, transcripts and minutes) and other documentary material—such as: Punch cards, magnetic tapes, cards, or discs, paper tapes, sound recordings, maps, photographs, slides, microfilm, and motion pictures.

(b) "Records" do not include: Objects or articles such as exhibits, model equipment, and duplication machines or audiovisual processing materials; books, magazines, pamphlets, and other reference material prepared or sold by, or available through, libraries, the Government Printing Office, the National Technical Information Service, HHS program offices or any other government or private organization.

§ 5.19 Request.

"Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies, or court orders for documents, are not included within this definition.

§ 5.20 Search time.

"Search time" is the amount of time HHS employees spend identifying and finding the records you have requested. This may represent an aggregate of time spent in reading and interpreting the request, obtaining the correct file(s), and selecting from the files the specific records requested. It does not include the time they spend deciding whether the records are discloseable or preparing records for release.

Subpart C—Obtaining a Record

§ 5.21 Requests for records.

(a) *General.* We will answer all requests for records, oral or written. We may ask you to put your oral request in writing if we do not understand what you want or if it is for more than one record. Also, you must put your oral request in writing if you are dissatisfied with our response and wish to appeal. Only official written determinations based on written requests may be appealed, and the appeal must be in writing.

(b) *Addressing requests.* It will help us to handle your request sooner if you address it to the Freedom of Information Officer in the HHS unit that is most likely to have the records you want. (See § 5.31 below for a list of Freedom of Information Officers.) If you cannot determine this, send the request to: HHS Freedom of Information Officer, 410–B, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and letter.

(c) *Details in the letter.* You should provide details that will help us identify and find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

(d) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301–3314; the Federal Property Management Regulations, 41 CFR 101–11.4; the General Records Schedules of the General Services Administration; and in the HHS Handbook: *Files Maintenance and Records Disposition.*

(e) *Furnishing records.* The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a new program so that a computer will print information in the format you prefer. However, if a minimal programming effort will enable us to extract the requested information from an existing data base, we will do this if it is the only way to respond to a request. Nor are we required to perform research for you. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than on tape, we will provide the printout.

§ 5.22 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation. We will notify you when we refer your request to another agency.

Subpart D—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.* To provide coordination and consistency in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records. These same officials determine fees.

(1) *HHS Freedom of Information Officer.* If the records you seek are addressed to or from an official or office of the Office of the Secretary (OS), including OS Staff Divisions, and Regional Directors' Offices or if the records you seek are the records of the Office of Child Support Enforcement, the Office of Community Services, or of any organizational unit of the Department not specifically identified below, or if the records you seek involve more than one Operating Division of the Department at headquarters or in a Regional Office only the HHS Freedom of Information Officer or his or her designee, may determine whether to release or deny the records.

(2) *CHDS Freedom of Information Officer.* If the records you seek are exclusively records of the Office of Human Development Services, including its records in the regions, only the Director, Office of Public Affairs, OHDS, who also is the OHDS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(3) *PHS Freedom of Information Officer.* If the records you seek are exclusively records of the Public Health Service or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Director, Office of Public Affairs, PHS, who also is the PHS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records, except as follows:

(i) *CDC Freedom of Information Officer.* If the records you seek are exclusively records of the Centers for Disease Control, only the Director, Office of Public Affairs, CDC, who also is the CDC Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(ii) *FDA Freedom of Information Officer.* If the records you seek are exclusively records of the Food and Drug Administration, only the Associate Commissioner for Legislation and Information, FDA, who also is the FDA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(iii) *NIH Freedom of Information Officer.* If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, NIH, who also is the NIH Freedom of Information Officer, or his or her designee, may

determine whether to release or deny the records.

(4) *SSA Freedom of Information Officer.* If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Information, SSA, who also is the SSA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(5) *HCFA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Office of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, or his or her designee may determine whether to release or deny the records.

(b) *Required concurrence.* The Assistant Secretary for Public Affairs must concur in any designation and in any further delegation of officials authorized to release or deny records.

(c) *Addresses and telephone numbers.* The addresses and telephone numbers of the Freedom of Information Officers are listed below.

Freedom of Information Officers

HHS Freedom of Information Officer, 410–B, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Tel: (202) 472–7453

SSA Freedom of Information Officer, Room 4J9, West Building, 6401 Security Boulevard, Baltimore, MD 21235. Tel: (301) 594–2823

OHDS Freedom of Information Officer, Room 329–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Tel: (202) 472–7257

HCFA Freedom of Information Officer, Room 658, East High Rise Building, Office of Public Affairs, 6325 Security Boulevard, Baltimore, MD 21207. Tel: (301) 594–4323

PHS Freedom of Information Officer, Room 721–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Tel: (202) 245–7686

FDA Freedom of Information Officer, HFW–35, Room 12A16, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Tel: (301) 443–1813

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B43, 9000 Rockville Pike, Bethesda, MD 20205. Tel: (301) 496–5633

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Ga 30333. Tel: (404) 329–3286

§ 5.32 Release of records.

(a) *Records previously released.* We ordinarily release to you any record or part of a record that we have released to others in the past. Special circumstances, however, sometimes make this inappropriate. For example, a record about the health and fitness of someone involved in an accident might be released to a litigant or attorney in a lawsuit relating to the accident but denied to other persons who had no urgent need to know. Also, we do not ordinarily provide from Department litigation files copies of actual pleadings filed in court, or administrative proceedings, since they are public documents and available through other sources. We will, however, inform you where you may obtain the documents.

(b) *Unauthorized disclosure.* We are not required to release information simply because it was previously disclosed to someone through an unauthorized disclosure.

(c) *Poor Copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

§ 5.33 Denial of requests.

(a) *Information furnished.* Deletion of anything from a record being disclosed constitutes a partial denial. All denials are in writing and describe in general terms the material withheld; state the reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request.

(b) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, this does not constitute a denial of your request.

§ 5.34 Appeal of denials.

(a) *Right of appeal.* You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and send it to the review official identified in the denial letter. You must send your appeal within 30 days from the date you receive that letter or from the date you receive the records released as a partial grant of your request, whichever is later.

(b) *Letter of appeal.* The appeal letter should state reasons why you believe that the FCIA exemption(s) we cited do not apply to the records that you requested, or give reasons why they should be released regardless of whether the exemption(s) apply. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your request by explaining your reasons for wanting the records. However, you are not required to give any explanation.

(c) *Review process.* Before making a decision on an appeal of a denial, the designated review official will consult with the General Counsel to insure that the rights and interests of all parties affected by the request are protected. Also, the concurrence of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request. If the review official grants your appeal, we will send the records to you promptly or let you inspect them, or else we will explain the reason for any delay and the approximate date you will receive copies or be allowed to inspect the records. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

§ 5.35 Time limits.

(a) *General.* FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we will acknowledge your request and tell you its status. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.* (1) We will decide whether to release records within 10 working days after your request reaches the appropriate FOI office, as identified in § 5.31 above. When we decide to release records, we will actually provide the records, or let you inspect them, as soon as possible after that decision.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate review official.

(c) *Extension of time limits.* FOI Officers or review officials may extend

the time limits in unusual circumstances. Extension at the request stage and at the appeal stage may total up to 10 working days. We will notify you in writing of any extension. "Unusual circumstances" include situations when we:

(1) Search for and collect records from field facilities, archives, or locations other than the office processing the request.

(2) Search for, collect, or examine a great many records in response to a single request.

(3) Consult with another office or agency that has substantial interest in the determination of the request.

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-discloseable proprietary materials.

Subpart E—Fees

§ 5.41 Policy on fees.

The fees described in this subpart reflect search and duplication costs which FOIA permits us to collect. The fee schedule is not intended to imply that fees must be charged for responding to FOIA requests. Our policy is that we will not charge for processing a FOIA request when the cost of collecting and processing the fee would exceed the amount of the fee. Requests for fee waiver or reduction are considered in light of the factors set forth in § 5.44 of this part.

§ 5.42 Fee schedule.

(a) *Charges for services.* The schedule of fees that the Department charges for FOIA services is:

(1) Manual searching for records—$10 per hour when the search is conducted by a GS–1 through GS–8, $20 per hour for the time that a GS–9 through GS–14 searches and $30 per hour for searches conducted by a GS–15 or above. A search may involve more than one employee and more than one level of fees.

(2) Photocopying standard-size pages—$.10 per page.

(3) Photocopying odd-size pages, such as punch cards or blueprints, or reproducing other records, such as magnetic tapes—actual cost of the operator's time up to $10 per hour, plus the cost of the machine time and the materials used.

(4) Use of electronic data processing equipment to obtain records—our actual cost for the service, including computer search time, runs, printouts, and employee costs.

(5) Certifying that records are true copies—$10 per certification.

(6) Packaging—cost of envelopes and boxes.

(7) Postage—actual costs.

(8) Sending records by special methods, such as express mail and "return receipt requested"—actural cost of special service.

(9) Performing other special services that you request and we agree to—actual cost of the time of our employees plus the cost of any machine time and materials used.

(10) Search and reproduction of records of Social Security number holders, wage earners, employers, and claimants—full costs as determined under section 1106(c) of the Social Security Act.

(b) We may charge for search time, even though we fail to find the records, if you request that we continue the search after we have informed you that it is unlikely to be productive. We also may charge you for search time if the records we locate are exempt from disclosure.

§ 5.43 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevetheless want us to proceed with the search.

(b) *Billing.* Usually we will send you a bill along with or following the delivery of the records you asked for. However, in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters, we may aggregate the charges for certain time periods. For example, we might send a bill to such a requester once a month. Fees should be paid by check or money order in accordance with the instructions furnished by the person who responds to your request.

(c) *Advance payment.* If you have failed to pay previous bills, or if our initial review of your request indicates that the search and duplication costs will exceed $50, we will require you to pay your past-due fees and/or the estimated fees, or a deposit, before we start searching for the records you want, or before we send them to you. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 above (i.e., ten working days from receipt of initial requests and twenty working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

§ 5.44 Waiver or reduction of fees.

(a) *Requests for waiver (or reduction).* If you believe that a fee waiver is appropriate, you must ask for one when you request the records. This will allow us to make a waiver determination, or to negotiate with you about fees, before we have expended considerable staff time searching files, or before any misunderstandings arise over the applicability or amount of likely fees.

(b) *Decision regarding fees.* Only Freedom of Information Officers as designated in § 5.31 of this part may waive or reduce all or some fees when they determine that furnishing the information can be considered as *primarily benefiting the general public* (the statutory standard). In such cases, the granting of a waiver (or reduction) is in the public interest. We are mindful, however, that whenever we grant a waiver, the taxpayers must pay costs that would otherwise be covered by FOIA fees. Any requester who disagrees with a fee waiver determination may, of course, appeal our decision. In making a determination as to whether to grant a request for fee wiaver, we condiser five general factors.

(1) *Public interest.* First, we assess whether there is a genuine public interest in the subject matter of the documents for which a fee waiver is sought. The "public" to be benefited need not be so broad as to encompass all citizens, but it must be distinct from the requester alone. Moreover, it is not in the public interest to grant a waiver solely on the basis of a requester's indigency. We would be inclined to waive fees if there were a strong need for public attention to matters to which the records relate. Documents in this category, for example, might include those bearing on the safety or health of the public, or on the integrity or efficiency of government.

(2) *Value of the records to the public.* A fee waiver is appropriate only if the discloseable contents of the records are in fact informative on the issue found to be public interest. The public benefits only if the information released meaningfully contributes to the public development or understanding of the subject. When the information that can be disclosed in response to your FOIA request is of only *marginal* value in informing the public, the public benefit derived from disclosure is dmininshed accordingly.

(3) *Availability in the public domain.* Where requested information is already

in the public domain, particulary in a public reading room in the Department, denial of fee waiver is appropriate. In such a case, we will inform you where the information is available.

(4) *Identity of FCIA requester.* While the identity of a requester is usually not a proper factor for agencies to consider in granting or denying *access* to records, we do consider this in acting on a request for a fee *waiver.* We evaluate a person's expertise in the subject area and ability and intention to disseminate the information to the public. Specialized knowledge is often required to extract and effectively convey information to the public, and requesters vary in their ability to do so. Therefore, you should specifically describe your qualifications, the nature of the research, and the purposes for which you intend to use the requested material. Bare assertions by requesters that they are "researchers" or have "plans to author a book" are insufficient.

(5) *Personal interest.* The final general factor requires an assessment, based on information you provide, as well as on information independently available to the agency, of any personal interests reasonably expected to be benefited by disclosure. Such interests, of course, include any commercial interests as well as the interests of first-party requesters in records pertaining to themselves, and the interests of parties seeking records for use in litigation. It is necessary to assess the magnitude of any such personal interest, and then to compare it with that of any discernible public benefit, because a fee waiver or reduction is appropriate under the statute only where the benefit to the general public is primary.

(c) *Fee reduction.* In some instances we may determine that a reduction of fees is more appropriate than a complete waiver. For example, a requested file may contain information which is only partly of interest and value to the general public. In such a case, rather than deny a fee waiver, we may grant a fee reduction in an amount commensurate to the valuable portion of the file. In any case, however, neither a waiver nor a reduction is appropriate unless the primary benefit from disclosure is to the general public (i.e., the public benefit must outweigh any personal benefit).

(d) *Reviewing refusals to waive or reduce fees.* If we deny your request to waive or reduce fees, the denial letter will designate a review official. You may appeal the denial to that official. You should specify in your appeal how release of the records will benefit the general public.

Subpart F—Records Available for Public Inspection

§ 5.51 Records available.

(a) *Records of general interest.* We will make the following records of general interest available for your inspection and copying. Before releasing them, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See § 5.67 of this part.)

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office for Civil Rights in civil rights complaints, and Social Security Rulings. (See § 5.66 of this part for availability of internal memorandums, including attorney opinions and advice.)

(2) Statement of policy and interpretations that we have adopted but have not published in the **Federal Register.**

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal invetigative or audit procedures as described in §§ 5.63 and 5.68 of this part.)

(b) *Other records.* In addition to such records as those described in paragraph (a) of this section, we will make available to any person all other agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and Subpart G of this regulation.

§ 5.52 Indexes of records.

(a) *Inspection and copying.* We will maintain and provide for your inspection and copying current indexes of the records described in § 5.51(a). We will also publish and distribute copies of the indexes unless we announce in the **Federal Register** that it is unnecessary or impracticable to do so. For assistance in locating indexes maintained in the Department, you may contact the HHS Freedom of Information Officer at the address and telephone number in § 5.31(c).

(b) *Record citation as precedent.* We will not use or cite any record described in this subpart as a precedent for an action against a person unless we have indexed the record and published or made it available, or unless the person has timely notice of the record.

Subpart G—Reasons for Withholding Some Records

§ 5.61 General.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions below and explain how this Department applies them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the Department from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

§ 5.62 Exemption one: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are "(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order." Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so, as explained in § 5.22 of the part.

§ 5.63 Exemption two: Internal personnel rules and practices.

We are not required to release records that are "related solely to the internal personnel rules and practices of an agency." Such records include, for example, test and answer sheets, guard schedules, rules governing parking facilities and lunch periods, and other housekeeping matters. Also, we do not ordinarily disclose staff manuals and other records that instruct our inspectors, investigators, auditors, and other agents how to investigate possible violations of law, to the extent that releasing such documents may help some people circumvent agency regulations or statutes.

§ 5.64 Exemption three: records exempted by other statutes.

We will withhold a record if we determine that it is exempt and if the information was furnished to the government in reliance on a promise of confidentiality authorized by statute or regulation. The other statute, however, must be specific before we can cite it as a basis for denying records. It must prohibit disclosure or set forth criteria to guide our decision, or specifically refer to the types of information to be withheld.

§ 5.65 Exemption four: trade secrets and confidential commercial or financial information.

We do not have to release information if it falls into one of two categories: Trade secrets; or information that is commercial or financial, and obtained from a person, and confidential or privileged.

(a) *Trade secret.* A trade secret is any formula, chemical composition, manufacturing plan, pattern, device or compliation of information that is used in a business and gives the holder an advantage over competitors who do not know or use the trade secret.

(b) *Commercial or financial information.* "Commercial or financial information obtained from a person and privileged or confidential" means valuable data or information we receive from outside the agency and which is used in a business, or is financial in nature, and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to members of the public by the person to whom it belongs. In determining whether such information is in fact confidential, we may consider such factors as:

(1) The general custom or usage in the occupation or business to which the information relates regarding its confidentiality.

(2) The number and situation of the individuals who have access to such information.

(3) The type and degree of risk of financial injury to be expected if disclosure occurs.

(4) The length of time such information should be regarded as retaining the charactheristics noted above.

(5) The likelihood that disclosure may impair our ability to obtain necessary information in the future.

(c) *Person.* For purposes of this exemption, a "person" can be an individual, partnership, corporation, association, or other organization. "Obtained from a person" does not apply if we ourselves generated the information, using government information as the source.

(d) *Request for business data contained in contract files.* When you request records that have been submitted to us by offerors on contracts, we will assess the request in light of the detailed guidance on FOIA to offerors that is contained in the HHS Procurement Regulation (41 CFR Part 3–1). As indicated in section 3–1.353(d)(2) of that regulation, the burden is on the offeror to identify those portions of the proposal that contain restricted information that is not to be used or disclosed except for evaluation purposes. The Department is not liable for disclosure of material that is not clearly identified as restricted. Moreover, even though certain information in a proposal is marked as restricted, we may not agree with such restriction. FOI Officers are responsible for making the determination to release or withhold information in response to a FOIA request.

(e) *Notification of the offeror.* When we receive a request for such marked material, we will notify the offeror in writing that we have received a request and that we are considering release of all or part of the requested material. We may also send such a notice when we receive a request for unmarked material where we believe the offeror might object to release of the material. In either case, the notice will include a copy of the request. The offeror has five (5) working days from receipt of written notification to explain in detail how disclosure of the requested material would result in significant harm to the competitive position of the offeror or benefit competitors.

(f) *Disagreement over applicability of Exemption Four.* If we disagree with the offeror regarding the extent to which Exemption Four applies, we will prepare the records as we propose to release them. If we decide to release all the records, we will notify the offeror in writing. If we decide to delete a portion, we will send a copy of the expurgated version to the offeror with notification of our decision. The notice will inform the offeror that we will release the records as prepared five (5) working days after the offeror's receipt of notice unless ordered by a U.S. District Court not to release them. For additional details on FOIA Treatment of Data in Contract Proposals, see the HHS Procurement Regulation (48 CFR Part 3–24).

(g) *Recourse to court.* If we decide to withhold information from you under this exemption and you contest the withholding in court, the offeror should intervene in court. If the offeror fails to intervene, it waives its interest in protecting the disputed records, and we may release them to you.

§ 5.66 Exemption Five: Internal memorandums.

This exemption includes a number of primary safeguards against premature or unwarranted release of records. The thee primary ones are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

(a) *Deliberative process privilege.* This is the most commonly used privilege under Exemption Five. It protects records reflecting internal government deliberation before a decision is made. The purpose is to prevent injury to the quality of the Department's decision-making process. Some basis for this privilege are: To encourage open, frank discussion on matters of policy between staff personnel; to protect against predecisional disclosure of proposed policies before they are finally adopted; and to prevent public confusion by disclosure of reasons and rationales that were not in fact ultimately the reasons for an action by some component of HHS. We usually release factual material (not otherwise exempt) in a predecisional, deliberative document if it can be separated from the opinions, evaluations, conclusions, and recommendations. If the information is so intertwined that the facts cannot be separated in any meaningful fashion, we may withhold the entire document.

(b) *Attorney work-product privilege.* This protects documents prepared by or for the government or its employees (typically by HHS attorneys) in anticipation of litigation or for trial. Frequently such documents set forth the attorney's theory of the case or litigation strategy. FOIA personnel make every effort to ensure that records that might harm the Department's position in a lawsuit are not inadvertently released.

(c) *Attorney-client privilege.* This applies to confidential communications between an attorney and another member of HHS who has sought professional advice or assistance.

§ 5.67 Exemption six: Clearly unwarranted invasion of personal privacy.

(a) *Documents affected.* We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(b) *Balancing test.* In deciding whether to release records to you that

contain personal or private information about someone else, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release. If you were seeking information for a purely commercial venture, for example, we might not think that disclosure would primarily benefit the public and we would deny your request. On the other hand, we would be more inclined to release information if you were working on a research project that gave promise of providing valuable information to a wide audience. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

(c) *Examples.* Some of the information that we frequently withhold under Exemption Six is: Home addresses, ages, and minority group status of our employees or former employees; social security numbers; names and addresses of individual beneficiaries of our programs, or benefits such individuals receive; earning records, claim files, and other personal information maintained by the Social Security Administration and Health Care Financing Administration.

§ 5.68 Exemption seven: Investigatory records.

We are not required to disclose investigatory records that our employees compile for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations.

(a) *Enforcement proceedings.* Release of certain information may interfere with prospective or ongoing law enforcement proceedings and harm the government's case in any subsequent court or administrative actions. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* We need not release records if such release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* We are careful not to disclose information that would constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* We need not disclose the identity of anyone who provides information to a government agency in confidence. The identity of these individuals is protected whether they provide, in connection with an investigation, information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. The exemption also protects all confidential information furnished to criminal law enforcement authorities in the course of a criminal investigation or a lawful national security intelligence investigation. Also protected from mandatory disclosure is any information which, if disclosed, would jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Investigative techniques and procedures.* Records reflecting special techniques or procedures of investigation not otherwise generally known to the public may be withheld. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld.

(f) *Life and physical safety.* Investigatory records are protected if disclosure would endanger the life or physical safety of law enforcement personnel. This protection extends to threats and harassment as well as to physical violence.

§ 5.69 Exemptions eight and nine: Records on financial institutions; records on wells.

Exemption eight permits us to withhold records about regulation or supervision of financial institutions. Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

December 26, 1985.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86-8747 Filed 4-17-86; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 86-126; FCC 86-154]

Common Carrier Services; Domestic Fixed Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes a number of changes to Part 21 of the Commission's Rules. The major substantive proposals are: (1) Adoption of a one-step licensing scheme, (2) the elimination of the need to demonstrate financial qualifications, (3) the adoption of strict requirements for extension of time allowed for construction, (4) the elimination of network classification distinctions from the rules governing DEMS, and (5) the adoption of streamlined procedures for certain minor facilities changes.

DATE: Comments must be received on or before May 19, 1986. Reply Comments must be received on or before June 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Emily Williams or Geraldine Matise, Common Carrier Bureau, (202) 634-1860.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted April 8, 1986, and released April 11, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision can also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The collection of information requirements contained in these proposed rules have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on the collection of information requirements should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Summary of Notice of Proposed Rulemaking

The Commission has adopted a Notice of Proposed Rulemaking proposing to substantially revise Part 21 of the Commission's Rules, which governs the construction, licensing, and operation of common carrier domestic fixed radio facilities. The proposals generally are designed to update and simplify the rules and to eliminate those requirements that appear to be no longer necessary to an efficient and orderly Part 21 licensing scheme.

First, the Commission proposed to adopt a one-step licensing scheme for the services regulated under Part 21. Prior to constructing a station, applicants would file a license application. If granted, the license would be conditioned upon the licensee completing construction of the facilities within a specified period and filing a certification of completion of construction with the Commission. If a licensee does not file a certification of construction completion within the prescribed time the license would expire automatically.

The Commission also proposed to eliminate the requirements that applicants demonstrate financial qualifications and submit topographic maps in applications. Further, it proposed changes to the frequency coordination procedures contained in § 21.100 to clarify the coordinating carrier's responsibilities with respect to other carriers. It also proposed that applications for certain minor facilities modifications be granted automatically on the twenty-first day after filing, unless the applicant is otherwise notified by the Commission and that other minor modifications be permitted without prior authorization.

The Commission also proposed several changes relating to construction of facilities. First, it proposed to list on public notice all applications for extension of time to construct. Second, it proposed to strengthen the requirements for obtaining an extension of time and to refuse to grant a license unless an applicant demonstrates that it will be able to use the site chosen for facilities. Third, it proposed to extend the period of construction for Multipoint Distribution Services to 12 months. Fourth, the Commission proposed that once a license is transferred or assigned, no extension of the construction time will be granted.

In the Digital Electronic Message Service the Commission proposed generally to eliminate the limited and extended network distinctions by, among other things, making all applicants eligible for any channel assignment. In addition, it proposed to allow a maximum construction time of 18 months for each DTS authorization granted.

Finally, the Commission proposed several miscellaneous rule modifications, primarily the elimination of certain technical and recordkeeping requirements, that are thought to be no longer useful.

The NPRM is a non-restricted notice and comment rulemaking proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will impact small entities by simplifying the radio license application procedures under Part 21 and relieving applicants and licensees of various requirements. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete notice.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419, interested parties may file comments on or before May 19, 1986, and reply comments on or before June 2, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clauses

Accordingly, pursuant to the authority contained in section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 303, and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, we hereby give notice of our intent to adopt the rule revisions.

List of Subjects in 47 CFR Part 21

Domestic Fixed Radio Services.

William J. Tricarico,

Secretary.

[FR Doc. 86-8692 Filed 4-17-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-117; RM-5085]

FM Broadcast Station in Bethany, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 238C2 for Channel 240A at Bethany, Missouri, and modification of the license of Station KAAN, Channel 240A, in response to a petition filed by Jerrell A. Shepherd. The proposed allotment could provide Bethany with its first wide area coverage Class C2 FM station.

DATES: Comments must be filed on or before June 5, 1986, and reply comments onor before June 20, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or appplied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, Bethany, Missouri; MM Docket No. 86-117 and RM-5085.

Adopted: March 28, 1986.
Released: April 14, 1986.
By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Jerrell A. Shepherd ("petitioner"), requesting the substitution of FM Channel 238C2 for FM Channel 240A at Bethany, Missouri. Petitioner also requests the modification of its license for Station KAAN (Channel 240A), Bethany, Missouri, to specify operation on Channel 238C2.

2. In support of its proposal, petitioner states that granting this request would enable Station KAAN to better serve a large rural area of northwestern Missouri. According to petitioner, the wide area coveage signal could provide programming of local interest to a larger population.

3. We believe petitioner's proposal warrants consideration. Channel 238C2 can be allocated to Bethany, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules, at the current location of Station KAAN.

4. In view of the foregoing, we shall propose to modify the license of Station KAAN to specify operation on Channel 238C2 as requested by the petitioner. Aware of the Commission's modification policy, *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976), petitioner advises that should another interest in the proposed allotment be expressed, an additional

Class C2 channel is available at Bethany. See, *Modification of FM and TV Station Licenses*, 98 FCC 2d 916 (1984).[1] Specifically, Channel 245C2 can be alloted to Bethany, consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules provided there is a site restriction 6.8 miles (10.9 kilometers) east of the community. The site restriction would prevent a short spacing to Station KZKX, Channel 245, Seward, Nebraska.

PART 73—[AMENDED]

5. In order to provide a wide coverage area station for the Bethany area, the Commission proposes to amend the FM Table Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Bethany, Missouri	240A	238C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before June 5, 1986, and reply comments on or before June 20, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John W. Hough, Howington, Elworth & Hough, 135 South LaSalle St., Suite 3910, Chicago, Illinois 60603, (counsel for the petitioner).

8. The Commisson has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86–8698 Filed 4–17–86; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–118; RM–5139]

TV Broadcast Station In Bath, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 14 to Bath, New York, as the community's

[1] Parties should be aware of the *Notice of Proposed Rule Making* in MM Docket 85–313, 50 FR 45439, published October 31, 1985, when filing comments in this proceeding. This proposal would permit FM stations to upgrade on adjacent channels without demonstrating the availability of an additional equivalent class of channel.

first local television service, at the request of Melvin Watkins.

DATES: Comments must be filed on or before June 5, 1986, and reply comments on or before June 20, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, Bath, New York; MM Docket No. 86–118 and RM–5139.

Adopted: March 28, 1986.
Released: April 14, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making submitted by Melvin Watkins ("petitioner") requesting the assignment of UHF TV Channel 14 to Bath, New York, as that community's first local TV service. Petitioner states that he will apply for the channel, if assigned.

2. Bath (population 6,042),[1] seat of Steuben County (population 99,217), is located in south central New York, approximately 70 miles west of Binghamton, New York. The assignment of Channel 14 at Bath requires the imposition of a 13.4 kilometer (8.4 miles) south site restriction in order to avoid short-spacings to unused Channel 21 at Batavia, New York, and to Station WUTV, Channel 21, at Rochester, New York. The staff's engineering review shows that there are also interference considerations to Channel 14 land mobile operations in New York/Northern New Jersey and Pittsburgh, Pennsylvania. However, we believe that a Channel 14 operation at Bath would not cause interference to these land mobile operations.

3. Canadian concurrence in this assignment is required since Bath is located within 400 kilometers (250 miles) of the U.S.-Canada border.

[1] Populaion figures are taken from the 1980 U.S. Census.

PART 73—[AMENDED]

4. Since the proposal could provide a first local television service to Bath, the Commission believes it appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Bath, New York		14–

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before June 5, 1986, and reply comments on or before June 20, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Melvin Watkins, P.O. Box 151, Buffalo, New York 14205.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will be given the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a

different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-8699 Filed 4-17-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-116; RM-5117]

FM Broadcast Station in Lomira and Ripon, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Mayville-Horicon Radio Company, proposes the allotment of Channel 241A to Lomira, Wisconsin, as that community's first local FM service. In order to accomplish this allotment, Channel 284A must be substituted for occupied Channel 240A at Ripon, Wisconsin.

DATES: Comments must be filed on or before June 5, 1986, and reply comments on or before June 20, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authoritizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making and Order to Show Cause

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations Lomira and Ripon, Wisconsin; MM Docket No. 86-116 and RM-5117.

Adopted: March 28, 1986.
Released: April 14, 1986.
By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Maryville-Horicon Radio Company ("petitioner"), requesting the allotment of FM Channel 241A to Lomira, Wisconsin, as that community's first local FM service. This can be accomplished by substituting Channel 284A for occupied Channel 240A at Ripon, Wisconsin. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if alloted.

2. Channel 241A can be allotted to Lomira in compliance with the Commission's minimum separation requirements, if the substitution at Ripon is made. Channel 240A at Ripon is occupied by Station KYUR-FM. Therefore, we are issuing an *Order to Show Cause* directed to Denovocom, Inc., licensee of Station KYUR-FM seeking comments as to why its license should not be modified to specify operation on Channel 284A in lieu of Channel 240A.

3. The ultimate permittee of Channel 241A at Lomira is required by Commission policy to reimburse the licensee of Station KYUR-FM, Channel 240A, Ripon, Wisconsin, for reasonable expenses incurred as a result of changing channels. Petitioner failed to state its willingness to reimburse Station KYUR-FM. Therefore, it is requested to do so in its comments.

PART 73—[AMENDED]

4. In view of the fact that Lomira could receive its first FM service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules for the following communities:

City	Channel No.	
	Present	Proposed
Lomira, Wisconsin		241A
Ripon, Wisconsin	240A	284A

5. Accordingly, it is ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, Denovocom, Inc., licensee of Station KYUR-FM, Ripon, Wisconsin, shall show cause why its license should not be modified to specify operation on Channel 284A as proposed herein instead of the present Channel 240A.

6. Pursuant to § 1.87 of the Commission's Rules, Denovocom, Inc. may, not later than June 5, 1986, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, it may, not be later than June 20, 1986, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Denovocom, Inc. to furnish additonal information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, the modification as proposed in the *Order to Show Cause*, and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. It is further ordered, That the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by certified mail, return receipt requested, to Denovocom, Inc., Radio Station WCWC-FM, Ripon, Wisconsin 54971.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before June 5, 1986, and are advised to read the Appendix for the proper procedures. A copy of such

comments should be served on the petitioner as follows:

Wayne R. Stenz, P.O. Box 591, Lomira, Wisconsin 53048 (Petitoner)
Lyle Robert Evans, Broadcast Consultant, 1145 Pine Street, Green Bay, WI 54301 (Consultant to Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–8697 Filed 4–17–86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83–415; RM–4301]

TV Broadcast Station in Jacksonville, FL

AGENCY: Federal Communications Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: This action denies a petition to assign UHF TV Channel 69 to Jacksonville, Florida, in response to a petition filed by David Allen Crabtree.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Jacksonville, Florida); MM Docket No. 83–415, RM–4301.

Adopted: April 2, 1986.
Released: April 14, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 20965 (published May 10, 1983), proposing to amend the Television Table of Assigments, § 73.606(b) of the Rules, by assigning UHF television Channel 69 to Jacksonville, Florida, as its eighth television channel in response to a petition for rule making filed by David Allen Crabtree ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if assigned. Comments in opposition to the proposal were filed by Motorola, Inc. ("Motorola") and by National Association of Business and Educational Radio, Inc. ("NABER"). The Association of Maximum Service Telecasters, Inc. ("MST") filed reply comments.

2. Motorola argues that the proposed assignment is likely to impact adversely on the availability or practical utilization of the 800 MHz band now

used for private land mobile conventional channels at Jacksonville. Motorola also claims that when land mobile and broadcast transmitters operate in close proximity, Channel 69 signals interfere with land mobile base stations. A Channel 69 operation is also said to degrade the sensitivity of the base station receiver and thus reduce the mobile unit's operating range. Motorola refers to the situation involving UHF television Channel 69 at Atlanta, Georgia, where the broadcaster's authorized power was limited to a level which would not cause interference to land mobile systems. It is the opinion of Motorola that the Commission should deny the request for Channel 69 at Jacksonville and should instead search for a channel which can coexist with 800 MHz private land systems.

3. In its opposition comments, NABER submits that a Channel 69 assignment at Jacksonville would adversely impact upon the growing number of business radio users in the vicinity. As an alternative, NABER suggests allocating a channel lower than Channel 69 to Jacksonville to satisfy any perceived public need for additional television service. With respect to the possible interference caused by a Channel 69 assignment at Jacksonville to land mobile facilities, NABER refers to the provisions of § 73.687(i)(1) of the Rules and to the Commission's policy statement, F.C.C. Mimeo 25–26, March 1, 1982, which indicates that permittees of television Channel 69 must suppress their secondary emissions to prevent interference to existing land mobile operations.[1] NABER also raises the issue of actual need and economic viability of yet another television station at Jacksonville noting that the community currently has six commercial stations and 35.6% cable penetration reaching 132,500 cable households.

4. In response, MST argues that Motorola and NABER are seeking to turn television Channel 69 into a guard band to protect land mobile operations on adjacent channels. Their suggestion that other UHF channels be assigned to Jacksonville overlooks the effects of UHF "taboos" which clearly prevent such assignments to Jacksonville. MST notes that land mobile interests sought and obtained reallocation of UHF television Channels 70–83 on a primary basis with full awareness that Channel 69 would remain available for television broadcasting. Based on these issues, MST urges the Commission to reject the counterproposals presented by Motorola and NABER.

5. The Commission recognizes that operation of a television station on Channel 69 can lead to objectionable interference to land mobile users operating on adjacent spectrum (800–806 MHz).[2] In this regard, the Commission recently ordered changes in the operations of various land mobile operations in order to eliminate interference caused by the operation of Channel 69 licensee in Atlanta, Georgia.[3] Such action was taken after various other attempts to correct the problem, such as reducing the television licensee's daytime operating power to six percent of full power (166 kW) proved ineffectual. The Commission does not believe that the referenced Atlanta situation is unique. Thus, it is suspending all Channel 69 assignments unitl it can find an adequate solution to the problems caused by electromagnetic emissions from new television stations on adjacent land mobile facilities.

6. Accordingly, in light of the above, it is ordered, that the Petition for Rule Making filed by David Allen Crabtree is denied.

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning the above, contact Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–8700 Filed 4–17–86; 8:45 am]

BILLING CODE 6712-01-M

[1] The Commission on March 1, 1982, issued a Public Notice, *Channel 14 and 69 Television Permittees' Obligation to Protect Existing Land Mobile Facilities on Adjacent Frequencies from Objectionable Interference.* In that release, the Commission advised all potential applicants for those channels that the grant of their construction permits would be conditioned to provide that, prior to being granted program test authority, they would be required to take adequate measures to provide protection against objectionable interference to existing land mobile radio facilities in the adjacent bands.

[2] See: Note 1.

[3] *Broadcast Corporation of Georgia (WVEU–TV), Atlanta, Georgia,* F.C.C. 84–38, Mimeo No. 34237, released March 8, 1984.

Notices

Federal Register
Vol. 51, No. 75
Friday, April 18, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

State Office of Voluntarism; (SOV Program Grants)

AGENCY: ACTION.

ACTION: Final Guidelines for State Office of Voluntarism (SOV).

SUMMARY: The following notice sets forth the final guidelines under which applications for new or continuation State Office of Voluntarism (SOV) program grants will be accepted and reviewed. This revision replaces the current SOVCP Guidelines which were published in the **Federal Register**, Wednesday, April 2, 1980 (45 FR 21663). This Notice describes the program purpose, applicant eligibility, scope of grant, selection criteria, SOV functions and application review process and criteria for SOV grants.

DATE: These guidelines shall take effect on May 19, 1986.

ADDRESS: SOV Program, ACTION, OVI, Room M–516, 806 Connecticut Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Priebe, SOV Program Manager, (202) 634–9749.

SUPPLEMENTARY INFORMATION: These guidelines are issued pursuant to the authority contained in section 123 of the Domestic Volunteer Service Act of 1973, as amended, Pub.L. 93–113 (42 U.S.C. 4993) ("The Act"). A Notice of Proposed Revision of Guidelines for SOVCP was published in the **Federal Register** on Friday, January 10, 1986 (51 FR 1265). The Notice proposed amendments that would (1) change the name of the program from State Office of Voluntary Citizen Participation (SOVCP) to State Office of Voluntarism (SOV); (2) amend the program purpose statement to state the primary purpose first; (3) amend the minimum grantee contribution to require match in the first year, and to require expenditure of a portion of match for personnel costs in the second and subsequent years; and (4) change the maximum grant award to reflect current appropriations and funding levels.

Discussion of Comments Received

No written comments were recieved by the Agency. Therefore, the revisions originally proposed are hereby incorporated into the final guidelines without further modifications.

State Office of Voluntarism (SOV Program Grants) Guidelines

(72.001 Catalog of Federal Domestic Assistance)

A. Program Purpose

State Office of Voluntarism (SOV) grants are made to promote and coordinate voluntary participation in state and local government and public and private nonprofit organizations by fostering, developing, creating, and/or supporting offices of voluntarism at the state level, to stimulate new active citizen initiatives and to support projects to address local problems, particularly those related to poverty, through voluntary action.

B. Eligibility

Applicants for State Office of Voluntarism grants must be State Governor's offices. Preference will be given in the following order:

. States currently operating a State Office of Voluntarism program under an ACTION grant (for continuation grants);

2. States which have never received funds under ACTION's State Office of Voluntarism Program;

3. States which in the past have received funds under ACTION's SOV Program, but whose State Offices have been closed for a minimum of 1 year (No related activity emanating from Governor's office for 1 year).

C. Scope of Grant

1. Approximately $515,000 is available annually to fund approximately 10 new and/or continuation grants. ACTION provides project grants for periods of up to 5 years (for a consecutive period of 60 months) to support the establishment and operation of the office.

2. ACTION requires that a new office use at least one of the following words in its name: Volunteer, Voluntary, Voluntarism or Volunteerism. Only offices applying for grants are subject to this requirement.

3. For new applicants, letters of intent must be submitted by January 31, and applications by March 31 of the year for which funds are requested. Applicants must submit a completed application for Federal Assistance which itemizes total program costs, including salaries and operating expenses for each period of program operation. For continuation grants, applications must be submitted 115 days prior to end of grant period. Late applications may be rejected due to lack of funds.

4. ACTION grant awards for the first year will normally not exceed $50,000. Grant awards for the first year will not exceed 90% of the total program budget or $50,000, whichever is less. The minimum required contribution by the grantee is 10% of the total grant budget which may be cash or in-kind, or a combination.

5. Second year grant awards will be subject to ACTION's appraisal of grantee performance the first year, approval of the second year continuation applications, and Congressional appropriations. Grant awards for the second year will not exceed 80% of the total program budget or $50,000, whichever is less. The minimum required contribution by the grantee is 20% of the total grant budget, ½ of which must represent expenditures for salaries and fringe benefits.

6. Third year grant awards will be subject to ACTION's appraisal of grantee performance the second year, approval of the third year continuation application and Congressional appropriations. Grant awards for the third year will not exceed 70% of the total program budget or $50,000, whichever is less. The minimum required contribution for the grantee is 30% of the total grant budget, ⅔ of which must represent expenditures for salaries and fringe benefits. The grantee, in cooperation with the Advisory Committee, shall submit with the grant application for the third and subsequent years a plan for continued funding of the State Office of Voluntarism at the conclusion of ACTION funding.

7. Fourth year grant awards will be subject to ACTION's appraisal of grantee performance the third year, approval of the fourth year continuation application, and Congressional appropriations. Grant awards for the fourth year will not exceed 60% of the total program budget, or $50,000,

whichever is less. The minimum required contribution for the grantee is 40% of the total grant budget, ¾ of which must represent expenditures for salaries and fringe benefits.

8. Fifth year grant awards will be subject to ACTION's appraisal of grantee performance the fourth year, approval of the fifth year continuation application, and Congressional appropriations. Grant awards for the fifth year will not exceed 50% of the total program budget, or $50,000, whichever is less. The minimum required contribution for the grantee is 50%, ⅘ of which must represent expenditures salaries and fringe benefits.

9. Continued financial support of the program beyond the fifth year will be the responsibility of the grantee.

10. A State Office of Voluntarism grant will cover those costs of operating the project that are allowable under Office of Management and Budget (OMB) Circular A–87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," and will be administered in accordance with OMB Circular A–102 "Uniform Requirements for Grants to State and Local Governments."

11. Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate the entire amounts of funds available, or any part thereof.

D. Required Functions of State Offices of Voluntarism

1. Organize and support a state coalition of the leadership of volunteer service organizations in order to be able to mobilize their memberships to address at least one specific statewide need annually.

2. Develop, implement, and maintain a comprehensive statewide system to disseminate information collected on voluntary action.

3. Annually, in conjunction with the Advisory Council, prepare at least one publication useful to both the private and public sectors. This publication should include the year's achievements, and a section on volunteer activities in the State developed in the first year and updated each subsequent year. Grantees are also encouraged to include recommendations, trends, highlights, and problems. The publications should be distributed throughout the State.

4. Develop, implement, and maintain a State plan for public recognition of volunteer activity and its enhancement.

5. After the first year of program operation, assist government agencies and nonprofit organizations at State and local levels to expand or develop voluntary action activities to meet needs. At least one major effort shall be identified (based on State needs) and implemented annually. Example: One State established a completely volunteer surplus commodities distribution program. Some 5,000 volunteers distributed more than 600,000 pounds of cheese to more than one-third of the State.

6. Implement one of the following three functions during the second, third, and fourth years of operation:

a. Develop an organization of volunteers to support State government human service initiatives or programs.

b. Assist in the development and support of community based self-help voluntary action initiatives.

c. Assist in the development of voluntary action offices in city and county government.

E. Recommended Functions of State Offices

(During entire program period):

1. Serve as advocates for effective volunteer involvement in State and local governments and nonprofit organizations. Example: One State encouraged the use of volunteers in State government by persuading the Secretary for Administration to include volunteers in the bid for employee liability insurance coverage. They further advocated for volunteers by persuading employers to count volunteer service time as work experience on employment applications.

2. Provide or arrange for the provision of training and technical assistance to public and private nonprofit organizations in such areas as grantsmanship, resource development, volunteer management, and the development of advisory groups.

3. Promote communication and collaboration among volunteer organizations including local ACTION projects and government agencies and provide statewide and local public forums, such as conferences, workshops, and seminars, for exchange of information.

4. Provide leadership in developing legislation, regulations, and systems supportive of voluntary action.

5. Serve as liaison with national, civic and volunteer organizations, including ACTION's State Program Office and ACTION's Office of Voluntarism Initiatives (OVI).

6. Carry out activities in consultation and cooperation with other State agencies and officials.

F. Applicant Must Submit, With the First Year Grant Application, a Plan for Development of an Advisory Council to the State Office of Voluntarism

1. The responsibility of the Advisory Council shall be clearly outlined in the plan.

2. The plan shall specify how and from which groups representatives of different segments of the population with expertise and skills that will contribute to the success of the office will be chosen to serve on the Advisory Council. The Advisory Council should include representatives of major volunteer service and private voluntary organizations in the State, State organizations of citizen and consumer groups, the business community, local decisionmakers, persons with disabilities, the poor, and the elderly. It is intended that this Advisory Council shall be representative of the population of the State. The Domestic Volunteer Service Act requires that the beneficiaries of volunteer efforts be involved to the maximum extent possible in the planning and policy stages at the local level. If possible, such individuals should be identified at the time of application.

3. The plan shall also specify the length of terms of members and the methods of selection of the chairperson of the Advisory Council.

4. The Advisory Council must meet a minimum of four times a year.

5. The Advisory Council should begin functioning no later than 3 months after the grant award.

6. In the third and subsequent years the Advisory Council will assist the grantee in developing a plan for continued funding of the State Office of Voluntarism.

G. Reporting Requirements

The Grantee is responsible for following grant management reporting requirements in accordance with ACTION Handbook 2650.2 (Grants Management Handbook for Grantees), and for submitting required reports to the appropriate ACTION office. Quarterly program reports and financial status reports are due within 30 days of the end of each fiscal quarter.

H. Application Review Process

Letters of inquiry by the Governor's Offices should be sent to the appropriate ACTION State Office, which will send the applicants the State Office of Voluntarism program package containing model budget information, samples of required reports, and other pertinent information. Applications submitted to ACTION State Offices will

be reviewed at the State and Regional office level. Following this review, applications will be sent with recommendations to ACTION's Office of Voluntarism Initiatives for final approval. The final selection of State Office of Voluntarism grantees will be made by the Director of ACTION's Office of Voluntarism Initiatives in accordance with the purposes of the Act, OVI policies, and the availability of funds.

Each Notice of Grant Award (NGA) will be made by the appropriate cognizant ACTION Regional Grants and Contracts Officer. The NGA sets forth in writing such items as the amount of funds granted, the terms and conditions of the grant award, the effective date of award, the performance period, and negotiated budget. The ACTION State Program Director will concur in the appointment of the State Office of Voluntarism director. SOV Grants funded under Title I, Part C, of the Domestic Volunteer Service Act of 1973, as amended, are not subject to the state review process under Executive Order 12372.

I. Application Review Criteria

Merit ratings are assigned to grant applications on the basis of completeness of application, clarity of stated goals and perceived statewide support. The various categories and ranges of numerical ratings which can be assigned are listed below.

1. Evidence of need for the program and its stated goals (0–10 points).

2. Program Objectives and Operation.

a. Clarity of stated objectives and relevance to program goals (0–5 points).

b. Demonstrated or potential ability to implement objectives within established time frames (0–5 points).

c. Completeness and appropriateness of plans for day-to-day operations and commitment of proposed staff (0–5 points).

3. Program Methods: adequacy and appropriateness of proposed method to conduct program activities and extent of creativity employed in program development (0–15 points).

4. Advisory Council: scope of functions and adequacy of representation (0–10 points).

5. Funds: adequacy of non-federal support for the total project period for which federal funds are sought; additional grantee contribution when not required; and concreteness of plans for self-support (0–10 points).

6. Other Supporting Data: Degree of local support and commitment for the development or continuation of a State Office of Voluntarism (0–20 points).

7a. *For First Year Applicants Only.* Evidence of written documentation that the heads of State departments or agencies support the State Office of Voluntarism and have designated a senior official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning volunteer activities (0–20 points).

7b. *For Second Through Fifth Year Applicants Only.* Extent to which prior year plans were effectively implemented (0–20 points).

8. A maximum of 100 points can be scored for State Office of Voluntarism proposal.

J. Availability of Forms

To be eligible for consideration an application must be prepared and submitted on ACTION Form A–1036 (Project Grant Application: Title I, Part C Programs) available from each ACTION State Office. Forms, instructions, and program guidelines will be provided in response to letters of inquiry sent at any time to ACTION State Offices.

K. Application submission

One signed original and two (2) copies of each completed application must be submitted to the appropriate ACTION State Office. Applications which do not conform to this announcement, or are incomplete, will not be accepted for review.

(42 U.S.C. 4993)

Signed in Washington, DC, on April 10, 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86–8727 Filed 4–17–86; 8:45 am]

BILLING CODE 6050–01–M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Posted Stockyards; Chino Livestock Commission and Yardage Co., CA, et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
CA–178 Chino Livestock Commission & Yardage Co., Chino, CA.	Oct. 1, 1985.
CA–179 Martin's Dairy Stockyards, Chino, CA.	Feb. 21, 1986.
CO–152 Garfield Livestock, Inc., Gilt, CO.	Feb. 25, 1986.
GA–192 Pulaski County Stockyard, Inc., Hawkinsville, GA.	Oct. 12, 1984.
IN–156 Gary Keislings Feeder Pigs, Walton, IN.	Sept. 7, 1984.
MI–147 Northern Michigan Beef Breeders, Gaylord, MI.	Mar. 3, 1986.
MN–182 Auction Livestock, Inc., Perham, MN.	Feb. 24, 1986.
NY–166 Dairymen's Livestock Market, Inc., Madison, NY.	Mar. 8, 1986.
SC–138 Intercoastal Auction Barn, Conway, SC.	Oct. 8, 1985.

Done at Washington, DC, this 14th day of April 1986.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR. Doc. 86–8770 Filed 4–17–86; 8:45 am]

BILLING CODE 3410–02–M

Proposed Posting of Stockyards; River Valley Livestock Market, AR, et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets and named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AR–162 River Valley Livestock Market, Ola, Arkansas

GA–194 Four Lions Livestock Auction, Ranger, Georgia

IL–171 Heart of Ill. Arena, Peoria, Illinois

IN–162 Hahn's Horse Auction, Marengo, Indiana

NC–156 Lucky Dollar Horse Auction, Grifton, North Carolina

NC–157 Farmers Livestock Market of Mount Airy, Mount Airy, North Carolina

OK–204 Hobart Stockyard, Inc., Hobart, Oklahoma

SC–140 Dudley Auction, Pageland, South Carolina

TN–156 Lawrence County Feeder Pig Sale, Inc., Ethridge, Tennessee

VA–156 Culpeper Agricultural Enterprises, Inc., Culpeper, Virginia

WA–129 Cattlemen's Livestock Exchange, Yelm, Washington

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by May 5, 1986.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 11th day of April 1986.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR. Doc. 86-8771 Filed 4-17-86; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

Electric and Telephone Borrowers General Funds; Implementation of Pub. L. 99-190

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Notice.

SUMMARY: On January 16, 1986, a notice was published in the **Federal Register** (51 FR 2411) stating that "notwithstanding the provisions of REA Bulletins 1-7 and 300-5, and other applicable bulletins and regulations, REA will not deny or reduce loans or loan advances based on a borrower's level of general funds in accordance with the terms and conditions of the Pub. L. 99-190."

The above statement of policy provided for REA implementation of a provision in Pub. L. 99-190, the Continuing Resolution for Fiscal Year 1986, which stated "that no funds appropriated in this Act may be used to deny or reduce loans or loan advances based upon a borrower's level of general funds." The effective date for implementation of this provision was December 20, 1985.

As of December 20, 1985, a number of telephone loan applications were in various stages of final approval, including some which may have included the loan being supplemented by a deposit of a borrower's general funds pursuant to REA Bulletin 300-5, General Funds, dated August 19, 1969. With respect to these loans as well as loans made prior to December 20, 1985, which may have included the same requirement, the following clarification of REA's January 16, 1986, general funds policy statement is made: Borrowers may apply for a loan to replace general funds deposits required pursuant to the terms of the telephone loan contract provided that no loan funds shall have been released in accordance with the loan contract prior to December 20, 1985.

Questions concerning this further clarification with respect to the telephone program should be addressed to John H. Arnesen, Assistant Administrator—Telephone, Rural Electrification Administration, 12th and Independence Avenue, SW., Room 4048-S, Washington, DC 20250, (202) 382-9554.

Dated: April 14, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-8772 Filed 4-17-86; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency
Title: Research on the Attitudes of Minority Youths Toward Entrepreneurship
Form number: Agency-NA; OMB-NA
Type of request: New collection
Burden: 1,440 respondents; 1,440 reporting hours
Needs and uses: This telephone and mail survey of Black, Hispanic, Asian and non-minority youths between the ages of 18 and 25 is expected to provide insights into how more positive attitudes and goals toward business ownership can be developed among the most disadvantaged groups in the United States.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 15, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-8751 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-07-M

Agency Forms Disapproved by the Office of Management and Budget (OMB)

OMB has disapproved the following collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Travel Questionnaire of U.S. Residents Returned from Trips Abroad
Form number: Agency—BE-574; OMB—0608-0001
Date disapproved: March 25, 1986

Additional information on the disapproval can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 9, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-8750 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Wholesale Trade Survey
Form number: Agency—B-450, B-451; OMB—0607-0195
Type of request: Extension of a currently approved collection
Burden: 6,300 respondents; 1,890 reporting hours
Needs and uses: This survey is the only continual source of annual wholesale sales, inventories, inventory valuation methods, and purchases, and is the only complete sample mailout to obtain the firms' method of inventory valuations. These data are used in estimating the gross national product and for benchmarking monthly sales and inventory data.

Affected public: Businesses or other for-profit institutions and small businesses or organizations
Frequency: Annually
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Manufacturers' Shipments, Inventories, and Orders
Form number: Agency—M-3(SD), M-3(MD); OMB—0607-0008
Type of request: Extension of a currently approved collection
Burden: 4,100 respondents; 16,400 reporting hours
Needs and uses: This is the only survey that provides monthly statistical information to government and industry on the entire manufacturing sector of the economy. These statistics are an essential part of the development of the gross national product accounts, and the survey is designated a "principal Federal economic indicator" by the Office of Information and Regulatory Affairs, OMB.
Affected public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: 1987 Economic Censuses
Form number: IRS—1120S, 1065, 1040, Schedule C; OMB—NA
Type of request: New collection
Burden: 15,000,000 respondents; 125,000 reporting hours
Needs and uses: Certain questions will be added to the IRS Forms 1120S, 1064, 1040, and Schedule C in years concurrent with the economic censuses. Responses will provide the Census Bureau with end-of-year and months-in-business information for small businesses that otherwise would be required to file census reports. The questions will be added to the form in FY88.
Affected public: Businesses or other for-profit institutions and small businesses or organizations
Frequency: Every 5 years
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1985 Panel Wave 6 and 1986 Panel Wave 3
Form number: Agency—SIPP-5600, SIPP-6300, SIPP-5606/6305L
Type of request: Revision of a currently approved collection
Burden: 42,580 respondents; 21,290 reporting hours
Needs and uses: This survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 15, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-8752 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C-201-012]

Carbon Black From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the countervailing duty order on carbon black from Mexico. The review covers the period April 8, 1983 through September 30, 1983 and eleven programs.

As a result of the review, the Department has preliminarily determined the bounty or grant for the period of review to be 0.80 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

We are also publishing a "Preferentiality Appendix." We invite the public to submit written comments on the appendix.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Long or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 29564) a countervailing duty order on carbon black from Mexico. We began this review of the order under our old regulations on December 5, 1983, and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, the petitioner, the Cabot Corporation, on September 16, 1985, requested that we complete the administrative review of the order, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican carbon black. Such merchandise is currently classifiable under item 473.0400 of the Tariff Schedules of the United States Annotated. The review covers the period April 8, 1983, through September 30, 1983, and eleven programs: (1) FOMEX; (2) FONEI; (3) CEPROFI; (4) NDP preferential discounts; (5) preferential pricing of natural gas and carbon black feedstock; (6) accelerated and immediate depreciation allowances; (7) state tax incentives; (8) Article 94 of the Banking Law; (9) FOGAIN; (10) import duty reductions and exemptions; and (11) CEDI.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust fund of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program since August 1, 1983. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available to manufacturers and exporters for two purposes: Pre-export (production) financing and export financing. The two carbon black exporters to the United States used only FOMEX export loans during the period of review. We consider FOMEX export loans to be export bounties or grants since these

loans are given only on merchandise destined for export at terms inconsistent with commercial considerations.

We found that the annual interest rate that financial institutions charged borrowers for FOMEX export financing, denominated in the currency of the importing country, ranged from 3.5 to 10 percent during the period of review. For those dollar-denominated loans, we used as a commercial benchmark interest information obtained from the U.S. Federal Reserve Board. Since we lacked information on effective FOMEX interest rates in this case, we chose nominal dollar rates as our benchmark. Based on that information, we preliminarily determine that, during the period of review, comparable dollar-denominated loans were available at 12.68 percent. The resulting weighted-average interest differential during the review period was 6.68 percent.

Because each exporter was able to tie all FOMEX loans to its exports to specific countries, we calculated benefits for only the FOMEX loans on U.S. shipments and allocated the benefits over only the value of U.S. shipments during the period of review. On this basis, we preliminarily determine the benefit from FOMEX loans to be 0.04 percent *ad valorem* during the review period.

On September 2, 1985, the Banco de Mexico raised the interest rate for FOMEX export financing to 6.60 percent. To calculate the estimated countervailing duty cash deposit rate, we compared the new FOMEX interest rates to our most recent commercial benchmark. The interest differential for dollar-denominated loans is 5.76 percent. On this basis, we preliminarily find, for purposes of cash deposits, a FOMEX benefit of 0.03 percent *ad valorem*.

(2) FONEI

The Fund for Industrial Development ("FONEI") is a specialized financial development fund, administered by the Banco de Mexico, which grants long-term peso loans at below-market rates. FONEI loans are available under various programs having different eligibility requirements. The plant expansion program is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan ("NDP"), which include industrial decentralization. We consider this FONEI loan program to confer a regional bounty or grant because it restricts loan benefits to those enterprises located outside of Zone III A.

Each firm had one FONEI plant expansion loan outstanding during the period of review. Negromex received an eight-year loan in March 1977 with a fixed interest rate. Humex received a one-year bridge loan with a variable interest rate in December 1982.

To calculate the benefit for the fixed-rate loan, we used the long-term loan methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) ("the Subsidies Appendix"). We compared the interest the firm paid in each year of the loan to the interest the firm would have paid using the commercial benchmark interest rate to find the benefit stream of the loan for each year the loan was outstanding. We used as our benchmark for the fixed-rate loan the 1977 annual average corporate bond yield in Mexico as published in *Morgan Guaranty's World Financial Markets:* 17.20 percent. We then found the present values of each year's benefit, totaled them, and spread that total over the life of the loan. In calculating the present values, we used as the weighted cost of capital the same *Morgan Guaranty* benchmark interest rate because we did not have sufficient information to calculate the actual weighted cost of capital. To determine the benefit for the review period, we prorated the 1983 benefit by the portion of the year in the review period.

The second loan under this program had a variable interest rate of the Costo Porcentual Promedio ("CPP") plus two points. The Banco de Mexico adjusted the loan's interest rate every six months. To finds the benefit, we treated the loan as a short-term (six month) loan with one interest payment during the review period. The lending rate was 48.12 percent (the CPP for December 1982 plus two points) and the commercial benchmark, the December 1982 national average interest rate published in *Indicadores Economicos,* was 52.20 percent.

We allocated the benefit from the loans over the firms' total sales of carbon black. We then weight-averaged the resulting *ad valorem* benefit by the firms' proportion of total Mexican carbon black exports to the United States during the review period. On this basis, we preliminarily find the benefit to be 0.02 percent *ad valorem* during the period.

(3) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates that are use to promote the goals of the NDP and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a varitety of federal tax liabilities.

Article 25 of the decree that established the basis authority for the issuance of CEPROFI's published in the *Diario Official* on March 6, 1979, requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFI's. Therefore, it is an allowable offset, as defined by section 771(6)(a) of the Tariff Act, from the gross bounty or grant.

During the review period, Humex received benefits under "Category II" which makes CEPROFI certificates available for particular industrial activities. We allocated the benefit (the face value of the certificates HUMEX received during the period), less the 4 percent supervision fee, over the total value of the firm's sales of carbon black to all markets during the period of review. We then weight-averaged the resulting *ad valorem* benefit by the company's proportion of the value of Mexican exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from the CEPROFI program to be 0.14 percent *ad valorem* during the review period.

(4) NDP Preferential Discounts

Under the NDP, utility companies grant preferential discounts on the price of electricity to firms located in specific regions or engaged in certain priority activities. During the period of review, Humex, located in Zone I A, received a 30 percent discount on the price of electricity it used in carbon black production. Because such discounts are ". . . provided or required by government action to a specific enterprise or industry, or group of enterprises or industries . . ." and are preferential, they are domestic subsidies.

The Department allocates benefits from preferential programs such as this to the period in which cash savings occur. *See* the Department's final affirmative determination in this case.) We allocated the benefits from this program, the total value of discounts received by the firm during the period, over its carbon black sales to all markets during the period of review. We then weight-averaged the resulting *ad valorem* benefit by the firm's proportion

of the value of Mexican carbon black exports to the United States. On this basis, we preliminarily determine the benefit from energy discounts to be 0.60 percent *ad valorem.*

(5) Preferential Pricing of Natual Gas and CBFS

The petitioner alleged that carbon black producers receive countervailable benefits through their purchase of natural gas and carbon black feedstock ("CBFS")[1] from PEMEX (the Mexican state-owned petroleum company) at prices lower than "world market" prices. In our final affirmative determination in this case, we stated that the existence of differentials between Mexican export (*i.e.*, world market) prices and domestic prices of natural gas and CBFS was, in and of itself, neither an export nor a domestic subsidy. Because the low domestic prices were not contigent on export performance and did not stimulate export sales over domestic sales, we determined that the differentials did not constitute an export subsidy for the Mexican carbon black industry. We found that there was no domestic subsidy because all industrial users of CBFS and natural gas in Mexico could obtain those goods from PEMEX at non-discriminatory prices; the goods were generally available and the prices not preferential.

The decision on natural gas was clearcut. With many actual users in a wide variety of industries, natural gas is available on a non-specific basis. By contrast, we found carbon black feedstock to be provided on a non-specific basis even though there was only one industrial use and two actual users. We believed at that time that limitations on an input's use arising from the inherent nature of the input, and not the activities of a government, did not render the provision of that input specific within the meaning of section 771(5) of the Tariff Act.

The Department still holds that the price differential between PEMEX's low domestic and high export prices of natural gas does not constitute a domestic subsidy because the domestic prices are available to more than a specific group of enterprises or industries. However, we have reconsidered our position regarding CBFS , the major input for carbon black production.

In our original investigation in this case, we relied on principles developed in our final determination in the countervailing duty investigations of certain softwood products ("lumber") from Canada (48 FR 24159, May 31, 1983). In those determinations, we held that if the only limitations on sales of an input were due to the inherent nature of the input and to the level of technological advancement rather than to government action, then the input would be generally available.

We preliminarily determine that with respect to the provision of CBFS we placed excessive emphasis on the inherent nature test articulated in the lumber case. Instead, we determine that there are too few users of CBFS for us to find that it is provided on a generally available basis.[2]

We therefore ask whether CBFS is provided at a preferential price. As discussed in more detail in the appendix to this notice ("the Preferentiality Appendix"), our standard test for preferentiality is whether the PEMEX price is more favorable to some than to others within the relevant jurisdiction. If we applied our preferred method for judging preferentiality, we would compare the price PEMEX charged to the carbon black producers for CBFS with the PEMEX price generally available to other purchasers in Mexico of CBFS to determine whether the price to the carbon black producers was more favorable. However, because there are no other purchasers of CBFS in Mexico, we have to apply some alternative test.

The first alternative in the "Preferentiality Appendix" is "Prices Charged by the Same Seller for a Similar or Related Good." Here, if we find a link between CBFS and a related product (the provision of which by the government is generally available), we can apply this test and use the price of the related good, appropriately adjusted, as a benchmark for measuring any preferentiality with respect to sales of CBFS in Mexico. We measure any preferentiality by comparing the price of CBFS in Mexico during the period of review with what our test shows it should have been.

The production of CBFS is one of two possible uses for cat cracker bottoms; they can also be blended with heavy fuel oil. Cat cracker bottoms are a contaminant in heavy fuel oil, but are frequently added to heavy fuel in small quantities, up to permissible levels of contamination, to increase the overall volume of heavy fuel oil available for sale. Because of that alternative use, we consider the price of heavy fuel oil to be the floor price for cat cracker bottoms and thus CBFS.

The expert testimony provided by the exporters and the petitioner is unanimous in stating that CBFS and no. 6 fuel oil, a heavy fuel oil, are related products, and that a correlation exists between the prices of CBFS and no 6 fuel oil. No. 6 fuel oil is generally available in the Mexican market. CBFS is generally priced higher than no. 6 fuel oil. The higher price in the marketplace for CBFS provides the incentive for producing CBFS. Otherwise, producers would blend the cat cracker bottoms with no. 6 fuel oil and sell them as no. 6 fuel oil.

While we compare the prices of similar products under the first alternative test, we also stated that we would make adjustments for cost differences in the two products. However, because the production processes for the two products differ, a cost-based adjustment for the difference between CBFS and no. 6 fuel oil is problematic. We can however estimate those differences by comparing the price differentials between the products in the Mexican market with the price differentials between the same products in a market whose prices are not controlled as they are in Mexico. We reason that the price differential in the non-controlled market is a reasonable substitute for the difference in cost.

During this review, the Mexican government supplied the PEMEX prices for no. 6 fuel oil and CBFS in pesos per liter, and the petitioners supplied the U.S. Gulf Coast prices for those same products in dollars per barrel. We converted the pesos per liter information into dollars per barrel using exchange rates during the period. We then compared the price difference between the U.S. Gulf Coast prices for no. 6 fuel oil and CBFS to the price difference between the PEMEX prices for those two products. During the period of review, the PEMEX price difference between no. 6 fuel oil and CBFS was essentially the same as the difference between the U.S. Gulf Coast market prices for those two products. In light of the similarity in these differentials and the generally available price in Mexico of no. 6 fuel oil, we preliminarily determine that CBFS is not provided to Mexican carbon black producers at a preferential price and, therefore, does not confer a countervailable subsidy.

(6) Other Programs

We also examined the following programs and preliminary find that the

[1] An issue in this review is whether PEMEX sells CBFS or cat cracker bottoms to the carbon black producers. The exporters contend that the product sold in Mexico as CBFS is actally cat cracker bottoms. The petitioner contends that the product is CBFS. We hold that PEMEX sells CBFS to the carbon black producers.

[2] We find that we relied incorrectly in the original investigation on the availability of No. 6 fuel oil in determining whether CBFS was generally available.

exporters of carbon black to the United States did not use them during the review period:

A. Accelerated and immediate depreciation;

B. State tax incentives;

C. Loans under Article 94 of the Banking Law;

D. Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");

E. Import duty reductions and exemptions; and

F. Tax Rebate Certificates ("CEDI")

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant to be 0.80 percent *ad valorem* for the period of review.

The Department therefore intends to instruct the Customs Service to assess countervailing duties of 0.80 percent of the f.o.b. invoice price for all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after April 8, 1983, and exported on or before September 30, 1983.

Further, because of the change in FOMEX, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.79 percent of the f.o.b. invoice price on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days from the date of publication, or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985.)

Dated: April 14, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

Preferentiality Appendix

Section 771(5)(B) of the Tariff Act of 1930 defines as a subsidy, "[t]he provision of goods or services at preferential rates" if "provided or required by government action to a specific enterprise or industry or group of enterprises or industries. . . ." The purpose of this appendix is to describe the Department's proposed methodoligy for determining whether a good or service is being provided at "preferential rates."

The most common test for preferentiality has been to examine whether the government (or government-directed supplier) provides a good or service to the producer(s) of a product at a price that is lower than the prices the government charges to the same or other users of that product within the same political jurisdiction. Two aspects of this test are particularly significant: (1) the use of comparisons within the same jurisdiction and, (2) the prices used for comparison purposes.

We continue to believe that comparisons within a jurisdiciton are the most appropriate measure of whether preferentiality exists. We interpret the so-called "specificity test" in section 771(5)(B) to apply to those government actions that are limited to a specific company or group of companies within the jurisdiction. Thus, generally available government actions affecting many groups within the jurisdiction are not domestic subsidies, regardless of whether those actions cause prices within the jurisdiction to differ from prices elsewhere. The proposed hierarchy, discussed below, reflects our firm intent to remain within the jurisdiction in determining whether goods and services are provided at preferential rates.

The second aspect of the test is the benchmark or reference point within the jurisdiction for determining whether the price to a given producer(s) is preferential. If the government sells an input that is generally available (*i.e.*, used by more than a specific enterprise or industry or group of enterprises or industries) to all other firms in the jurisdiciton at a higher price than to producers of the product under investigation, then the government action is preferential and the measure of preference is the difference between the two prices charged by the government.

This measure of preferentiality, price discrimination within the jurisdiciton by the government, continues to be the Department's preferred test for finding whether the provision of goods and services is at preferential rates. Such comparisons cannot always be made. When the producers under investigation are the only users within the jurisdiction of the government-provided good or service, there will be no reference price charged to other users within the jurisdiction. Similar or related goods may be used by others, but the particular input in question is limited in its use by its inherent characteristics. In these instances we must use alternative measures to determine whether the government is providing the good or service at a preferential rate.

In summary, the Department has developed alternative tests to determine whether a government is providing a good or service at preferential rates in those situations where the users are limited, for whatever reason, and, therefore, there is no generally available reference price charged to other users within the jurisdiction. These alternative tests are designed to measure the difference between the price the government charges the producers under investigation and prices it would charge absent preference. Thus, these tests attempt to calculate a non-preferential, generally-available price for the good or service in question.

These proposed tests may not include all of the possible alternatives. Nor is the current ranking of these tests definitive. In this preliminary appendix we merely set forth our current thinking as to how we might determine preferentiality in the types of situations described above. We welcome comments from the public on these tests, other alternative tests, and the appropriate ranking of the various tests.

The contemplated alternative tests, as currently ranked, are:

(1) Prices Charged by the Same Seller for a Similar or Related Good

Under this alternative, we would seek the price the government charges for a good that is similar or related ("similar") to the good the government provides to the producer(s) under investigation. The similar good and the price for the similar good would have to be generally available. Moreover, the price of the similar good would have to be adjusted to reflect any differences in the cost of producing the two goods.

For example, assume that a government provides ice to ice cream makers, the only users of ice within the jurisdiction (*i.e.*, the users of ice constitute a small market), for $1 per pound. The government also provides water on a generally-available basis at $1 per gallon. In this situation, if it takes one gallon of water to make a pound of ice, then the price the government is charging ice cream makers for ice is preferential. The non-preferential price for ice would be calculated by adjusting the price charged for water upwards to reflect the additional costs incurred within the jurisdiction to make ice.

This test is the closest approximation to the standard test because it focuses on the same seller and that seller's decision to sell a similar good or service at a dissimilar price. Moreover, this test measures the relative preference that exists within the jurisdiction between users of the good or service in question and a generally available good or service.

(2) Prices Charged Within the Jurisdiction by Other Sellers for an Identical Good or Service

In the event that the government does not sell a good or service that is similar to that in question, the next alternative test of preferentiality would be whether the government charges the producers under investigation less than the price other sellers charge buyers within the jurisdiction for an

identical good or service. These other sellers may include private sellers within the jurisdiction or foreign sellers selling into the jurisdiction, the only limitation being that such sales must have occurred. In other words, under this alternative the point of reference would be prices observed within the jurisdiction.

This alternative is less preferred than the first because it ceases to use the seller's actions to judge preference. It is, however, similar to the standard test in that it relies on prices for identical goods within the jurisdiction. By relying on commercial sellers' prices within the jurisdiction, we are able to reflect fluctuations in supply, demand, business cycles, and other factors within the jurisdiction which might affect non-preferential pricing decisions. This test assumes that, absent preference, the government would opt to provide the good or service at a price in line with commercial sellers' prices.

This alternative is less satisfactory than the standard test because it is a less accurate measure of the benefit conferred by a government's decision to sell the good or service at a given price, and, thus, may not necessarily measure the relative preference within the jurisdiction. The other sellers' prices may be distorted by the government's presence in the market. Furthermore, the other sellers' prices are not more generally available than the governments because there are still only a limited number of users of the good or service.

To see this, return to the example of ice sales to ice cream makers. Assume that a private ice maker also supplies ice to ice cream makers but charges $2 per pound as compared to the government's price of $1 per pound. The fact that these two prices exist side-by-side is an indication that the government is not providing enough ice at $1. Thus, the $2 the private seller charges is a scarcity price, not a market clearing price. More importantly, $2 is not a price that is provided on a generally available basis because, in this example, ice cream makers are the only users of ice.

A variation of this alternative that might arise in certain situations would be to use the prices charged by other sellers to buyers within the jurisdiction for a good or service similar to that being provided to the producer(s) under investigation. The adjustments described under the first alternative would be applied to the price of the similar good or service.

(3) The Same Seller's Cost of Producing the Good or Service

Under this alternative the preferentiality of the price for a good or service provided by the government would be ascertained by comparing the price to the government's cost of providing the good or service. This is a measure of preferentiality because if the government is selling below cost, persons other than the buyers must be bearing those costs.

This alternative is deficient when compared to the previous tests because it does not rely on observable prices for the good or service in question. However, it preserves somewhat the relative price differentials that could be expected to exist within the jurisdiction because the imput prices that go into calculating the cost are prices within the jurisdiction.

There are two major shortcomings of this approach. One is that it may not be workable for certain goods, especially natural resources. Returning once more to the ice example, assume that water is not sold in the jurisdiction. Instead, it is an untraded input into the product. In this instance there would be no non-arbitrary price to assign to water as part of the cost of producing ice. The second is that this alternative assumes that prices are solely a reflection of costs. However, you can have two goods with the same cost of production but different prices because market forces such as demand may enable a firm to earn a greater profit on one good over the other. Over time such disparities would adjust, but we will be measuring at a specific point in time.

(4) External Prices

The least desirable alternative for determining whether the government provided a good or service at preferential rates would be to compare the price the government charges the producer(s) under investigation to the price paid for the same good or service outside the jurisdiction. These prices could include the price at which the government exports the good or service, a world market price for the good or service, or a commercial price in an external market that resembles the market in question.

We consider this alternative to be the least desirable and most deficient because regardless of which external price is chosen for comparison purposes, a domestic subsidy is no longer being defined by its effect on the domestic market. This test does not measure preference within an economy. No longer would the absence of preference within an economy be a sufficient basis for determining that no subsidy was conferred. However, in some circumstances it may be an appropriate benchmark.

The alternatives discussed above are not all inclusive. We may still encounter situations when none of these tests can be applied and need to devise another method of measuring whether preference exists. However, we believe most situations will be covered by these tests.

In applying our preferentiality test we will always go to our standard test first. However, if the existing information is inadequate to allow us to apply this test we would fall back to the alternative tests in the order discussed above. We would use the first of those alternative tests for which we had sufficient information. Any alternative test we use will be aimed at finding the most accurate measure of a generally available price to use as a benchmark price for the good in question.

The public may submit written comments on this appendix within 30 days of the date of publication of this appendix. In the upper right hand corner of the first page of written comments, submitters should place the words "Preferentiality Appendix." The Department will consider issues raised in any such written comments.

[FR Doc. 86-8404 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received timely requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations with March anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 18, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 32556) a notice outlining the proceduers for requesting administrative reviews during the anniversary month of a proceeding. The Department has received timely requests, in accordance with §§ 353.53a(a)(1)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations with March anniversary dates.

Initiation of Reviews

In accordance with §§ 353,53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspended investigations. We intend to issue the final results of these reviews not later than April 30, 1987.

Antidumping duty proceedings and firms	Periods to be reviewed
Sodium nitrate from Chile: SQM	3/85-2/86
Viscose rayon staple fiber from Finland: Kemira Oy Sateri	3/85-2/86

Antidumping duty proceedings and firms	Periods to be reviewed
Viscose rayon staple fiber from France:	
Achille Bayart	3/85–2/86
Certain brass fire protection equipment from Italy: Rubinetterie Giacomini	7/10/84–2/86
Ferrite cores (of the type used in consumer electronic products) from Japan:	
Fuji Electrochemical	3/85–2/86
Sony	3/85–2/86
Television receiving sets from Japan:	
General Corp. of Japan	3/85–2/86
Hitachi	3/85–2/86
Matsushita Electric	3/85–2/86
Mitsubishi Electric	3/85–2/86
Nippon Electric	3/85–2/86
Sanyo Electric	3/85–2/86
Sharp	3/85–2/86
Toshiba	3/85–2/86
Victor Co. of Japan	3/85–2/86

Countervailing duty proceedings	Periods to be reviewed
Textile mill products and apparel from Argentina	12/21/84–12/85
Certain castor oil products from Brazil	1/85–12/85
Cotton yarn from Brazil	4/84–12/85
Certain tool steel products from Brazil	1/85–12/85
Certain iron-metal construction castings from Mexico	4/83–12/85
Certain textile mill products from Mexico	1/85–12/85
Cotton shop towels from Pakistan	4/84–12/85

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: April 11, 1986.

John L. Evans,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–8405 Filed 4–17–86; 8:45 am]

BILLING CODE 3510-DS-M

Ohio State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–110. Applicant: Ohio State University, Columbus, OH 43210. Instrument: Mass Spectrometer, Model 261V with Accessories. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 51 FR 6576.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (August 16, 1985).

Reasons: The foreign article is a fully automated multicollector instrument capable of high precision isotope ratio measurements on small unstable samples. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, neither was contracted nor received a response from the only domestic manufacturer to a formal request for quotation until well after the closing date for receipt of bids, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–8707 Filed 4–17–86; 8:45 am]

BILLING CODE 3510-DS-M

The Research Foundation of State University of New York; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–101. Applicant: The Research Foundation of State University of New York, Albany, NY 12201. Instrument: Fluorescence Lifetime Instrumentation. Manufacturer: PRA International, Inc., Canada. Intended use: See notice at 51 FR 6155.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of measuring four (4) component decays with fluorescence lifetimes in the 300 picosecond to 20 microsecond range. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–8709 Filed 4–17–86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Rutgers University

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00

P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–024R. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Thermal Ionization Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Limited, United Kingdom. Original notice of this resubmitted application was published in the Federal Register of November 6, 1985.

Docket No. 86–167. Applicant: Brown University, Materials and Research Laboratory, Barus and Holley Building, Providence, RI 02912. Instrument: Foruier Transform Interferometer. Manufacturer: Bomen, Canada. Intended use: The instrument is intended to be used in a wide range of studies including infrared and far infrared spectroscopy of semiconductors and amorphous materials, visible and infrared spectroscopy of chemisorption and physisorption on surfaces, high resolution gas phase spectroscopy of desorbed and adsorbant species, visible, near infrared and infrared spectroscopy of Faraday rotator glasses, optical recording media, laser materials and semiconductors. The instrument will also be used by students in the course of their studies and graduate and undergraduate research in courses in physics, engineering and chemistry. Application received by Commissioner of Customs: March 27, 1986.

Docket No. 86–168. Applicant: The Mount Sinai School of Medicine, Fifth Avenue at 100th Street, New York, NY 10029. Instrument: Electronic Circuit Board (High Speed Framestone). Manufacturer: Joyce Electronics Limited, United Kingdom. Intended use: The article is intended to be used for research in the area of visual physiology. This research will involve studying brain wave responses to specific visual patterns which are generated under computer control on a specially built large oscilloscope screen. The objective of this research is to understand how the primate visual system processes spatial contrast. Application received by Commissioner of Customs: March 27, 1986.

Docket No. 86–170. Applicant: Washington University, Department of Physics, Lindell and Skinker Boulevard, St. Louis, MO 63130–4899. Instrument: Electron Microscope, Model JEM–2000FX. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument is intended to be used for the study of condensed phases. Specific studies will include:

(1) Studies of interplanetary dust particles that are collected in the upper atmosphere, to understand the nature of the early universe and the formation of our solar system.

(2) Studies of the structure and phase transformation behavior of various metastable phases to understand and quantitatively predict the quenching conditions that are required for the formation of these phases.

(3) Studies of the energy lost by the electron beam on passing through condensed phases.

In addition, the instrument will be used to teach the principles of electron microscopy in order that faculty and students can complete their research projects. Application received by Commissioner of Customs: March 27, 1986.

Docket No. 86–171. Applicant: Armed Forces Radiobiology Research Institute, Building 42, Bethesda, MD 20814–5145. Instrument: Preparative Quench Flow Unit, Model PQ–43. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: The instrument is intended to be used for studies of synaptic nerve terminals. Experiments will be conducted to determine the effects of ionizing radiation on the ability of synaptic nerve terminals to accumulate radioactive sodium ions. Application received by Commissioner of Customs: March 27, 1986.

Docket No. 86–172. Applicant: University of California, Davis, Business and Finance Office, Mrak Hall Circle, Davis, CA 95616. Instrument: Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. The instrument is intended to be used to study the effect of ESWL on tumor growth on the Nobel rat prostatic cancer transplanted to the nude mouse. The instrument will also be used in the course MS430 to demonstrate and teach the most-up-to-date noninvasive techniques in treating kidney stones in patients. Application received by Commissioner of Customs: March 27, 1986.

Docket No. 86–173. Applicant: Northeastern University, Barnett Institute, 341 Mugar Building, 360 Huntington Avenue, Boston, MA 02115. Instrument: Electron Microscope, Model H–600–5. Manufacturer: Hitachi, Ltd., Japan. Intended use: The instrument is intended to be used for studies of stable and metastable metals and alloys, semiconductors and solid state chemistry materials including catalysts, hydrogen permeable membranes and atomic clusters. The instrument will also be used for teaching instrumental analysis techniques and methods and microscopic structure of solid state in the courses Modern Methods of Analysis (CHM 3420) and Solid State Chemistry (CHM 3543). Application received by Commissioner of Customs: March 27, 1986.

Docket No. 86–174. Applicant: University of Wisconsin-Madison, 1525 Linden Drive, Madison, WI 53706. Instrument: Tandem Scanning Reflected Light Microscope. Manufacturer: Sluzba Vyzkumn, Czechoslovakia. Intended use: The instrument will be used for the study of tissue culture cells, both using the reflected and fluorescent modes. Layered cell cultures and thick, plastic-embedded sections will be studied in order to produce 3–D computer images of the samples. Experiments will be conducted to answer basic questions surrounding the process of cell division that underlies the growth of all living things. Application received by Commissioner of Customs: March 27, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–8711 Filed 4–17–86; 8:45 am]

BILLING CODE 3510–DS–M

State University of New York at Stony Brook; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86–078. Applicant: State University of New York at Stony Brook, Albany, NY 12201. Instrument: Ultra High Pressure System. Manufacturer: Sumitomo Heavy Industries, Japan. Intended use: See notice at 51 FR 4647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can supply pressure to 250 kilobars at temperatures to 2000 degree centigrade and an sample having a volume up to 10 cubic millimenters. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-8708 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Los Alamos National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-104. Applicant: University of California, Los Alamos National Laboratory, Los Alamos, NM 87545. Instrument: Streak Camera System, Model IMACON 501. Manufacturer: Marco Scientific Inc., United Kingdom. Intended use: See notice at 51 FR 6155.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a sensitivity of 100 micro amps/watt at 1.064 micron wavelength a dynamic range of 50:1 and a temporal resolution of 10 picoseconds. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-8710 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review for Certain Fabricated Steel Bridge Sections: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain fabricated bridge sections.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3091, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

The products in question are fabricated bridge section components to be assembled into finished bridges for temporary and permanent use. Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of the submission, and also provide a non-proprietary submission which can be placed in the public file. The public file is maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 15, 1986.

[FR Doc. 86-8753 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

[Docket No. 60113-6013]

Approval of Federal Information Processing Standard 120, Graphical Kernel System (GKS)

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 120.

SUMMARY: On March 29, 1985, notice was published in the **Federal Register** (50 FR 12602) that a Federal Information Processing Standard for Graphical Kernel System (GKS) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed jsutification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6622, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Skall, Center for Programming Science and Technology, Institute for Computer Sciences and Technology,

National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–2431.

Dated: April 14, 1986.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 120

(Date)

Announcing the Standard for Graphical Kernel System (GKS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Graphical Kernel System (GKS) (FIPS PUB 120).

2. *Category of Standard.* Software Standard, Graphics.

3. *Explanation.* This publication announces the adoption of the American National Standard Graphical Kernel System, ANS GKS, as a Federal Information Processing Standard (FIPS). ANS GKS specifies a library (or toolbox package) of subroutines for an application programmer to incorporate within a program in order to produce and manipulate two-dimensional pictures. The purpose of the standard is to promote portability of graphics application programs between different installations. The standard is for use by implementors as the reference authority in developing graphics software systems; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Graphical Kernel System (GKS), ANSI X3.124.1985.

7. *Related Documents.* a. Federal Information Resource Management Regulation 201–8.1, Federal ADP Telecommunications Standards.

b. Draft Proposed American National Standard Computer Graphics Metafile (formerly titled the Virtual Device Metafile).

8. *Objectives.* The primary objectives of this standard are:

—to allow graphics application programs to be easily transported between installations. This will reduce costs associated with the transfer of programs among different computers and graphics devices, including replacement devices.

—to aid manufacturers of graphics equipment by serving as a guideline for identifying useful combinations of graphics capabilities in a device.

—to encourage more effective utilization and management of graphics application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of graphics programmer retraining.

—to aid graphics application programmers in understanding and using graphics methods by specifying well-defined functions and names. This will avoid the confusion of incompatibility common with operating systems and programming languages.

9. *Applicability.* a. This standard is intended for use in computer graphics applications that are either developed or acquired for government use. It is suitable for use in graphics programming applications that employ a broad spectrum of graphics, from simple passive graphics output (where pictures are produced solely by output functions without interaction with an operator) to interactive applications; and which control a whole range of possible graphics devices, including but not limited to vector and raster devices, microfilm recorders, storage tube displays, refresh displays and color displays. Although this standard was not developed specifically for the Printing/Graphics Arts industry, it may be used in these applications whenever desirable.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the graphics program will be longer than the life of the presently utilized graphics equipment.

—The graphics application or program is under constant review for updating of the specifications, and changes may result frequently.

—The graphics application is being designed and programmed centrally for a decentralized system that employs computers of different makes and models and different graphics devices.

—The graphics program will or might be run on equipment other than that for which the program is initially written.

—The graphics program is to be understood and maintained by programmers other than the original ones.

—The graphics program is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that the use of these or any other non-standard language elements may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

10. *Specifications.* American National Standard Graphical Kernel System, ANS GKS, contains the specifications for FIPS GKS. The ANS GKS document defines the scope of the specifications, the syntax and semantics of the GKS functions and requirements for a conforming implementation and program. All of these specifications apply to FIPS GKS.

The ANS is separated into two parts. Part 1 represents the functional aspects of GKS. Part 2 contains bindings of GKS functions to actual programming languages. These bindings are developed in cooperation with the standards committees of the languages to which GKS is bound. A binding of the GKS functionality to the ANS Programming Language FORTRAN (X3.9–1978), known colloquially as FORTRAN '77, appears in the first version of ANS and FIPS GKS. Subsequent language bindings for C, ADA, PASCAL, etc., may be added periodically as they become available.

For these subsequent bindings, ANSI will be going thrugh the usual ballots and review cycles. After adoption by ANSI, each language binding will automatically become part of FIPS GKS.

11. *Implementation.* The implementation of this standard involves two areas of consideration: Acquisition of GKS software system implementations (or toolbox packages), and interpretations of GKS toolbox packages.

11.1 *Acquisition of Two-Dimensional Graphics Toolbox Packages.* This publication is effective November 3, 1986. Two-dimensional graphics toolbox packages acquired for Federal use after this date should implement FIPS GKS. Conformance to FIPS GKS should be considered whether GKS toolbox packages are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified

for use in contracts for programming services.

A transition period provides time for industry to produce two-dimensional graphics toolbox packages conforming to the standard. The transition period begins on the effective date and continues for one year thereafter. The provisions of this publication apply to orders placed after the effective date, however, a two-dimensional graphics toolbox package not conforming to FIPS GKS may be acquired for interim use During the transition period.

12. *Interpretation of FIPS GKS.* Resolution of questions regarding this standard will be provided by NBS. Questions concerning the content and specifications of this FIPS PUB should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: GKS Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

12. *Where to obtain copies.* Copies of this publication are for sale by the National Technical Information service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute, and the associated FORTRAN binding can be purchased separately.) When ordering, refer to Federal Information Processing Standards Publication 120 (FIPSPUB120), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 86-8712 Filed 4-17-86; 8:45 am]
BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*).

Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpart Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received from the Governments shown below.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

	Code Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific
GOA	Gulf of Alaska	North Pacific
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic
SNA	Snails (Bering Sea)	North Pacific
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific
PBS	Pacific Billfishes and Sharks.	Western Pacific

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.

[1] Vessel(s) in support of U.S. vessels Joint Venture.

Nation vessel name vessel type	Application number	Fishery	Activity
Government of Japan.			
Banyo Maru, scouting vessel.	JA-86-0099	BSA, GOA, NWA, SNA	2
Government of the Union of the Soviet Socialist Republics.			
Serebriannyi, cargo/transport vessel.	UR-86-0797	BSA, GOA, WOC	3
Government of Portugal.			
Joao Alvares Fagundes, large stern trawler.	PO-86-0004	NWA	[1] 2
Juis Ferreira De Carvalho, large stern trawler.	PO-86-0005	NWA	[1] 2
Praia Da Comenda, large stern trawler.	PO-86-0027	NWA	[1] 2

[1] Vessel(s) in support of U.S. vessels Joint Venture.

Joint Venture

The Government of Japan has submitted a permit application amendment adding two vessels, ANYO MARU No. 22 and FUKUYOSHI MARU No. 85, to the request for joint venture activities in the GOA fishery for longlining with the American partner, North Pacific Cooperative Fisheries Company, Ltd., Anchorage, AK. The Notice of Receipt of the applications was published December 6, 1985, 50 FR 50150.

The Government of Portugal has submitted applications to engage in squid joint venture activities in the NWA fisheries. The species and amounts requested are *Illex* (5,000 mt.) and *Loligo* (1,000 mt.). The designated

American partner is Scan Ocean, Gloucester, MA.

The Government of the Polish People's Republic has submitted a permit application amendment to their joint venture request for the WOC fishery initially submitted October, 1985, and published November 21, 1985 (50 FR 48112). The request is for Pacific whiting (30,000 mt.) The designated American partners are Alaskan Joint Ventures, Ltd., Anchorage, AK; Profish International, Inc., Seattle, WA; and Quest Trading Company, Coos Bay, OR.

The Government of the Union of the Soviet Socialist Republics has submitted an application requesting joint venture activities in the WOC fishery. The species and amounts requested are Pacific whiting (40,000 mt.) and Pacific Mackerel (5,000 mt.). The American partner is Marine Resources Company, Seattle, WA.

[FR Doc. 86-8715 Filed 4-15-86; 11:17 am]

BILLING CODE 3510-22-M

Caribbean Fishery Management Council; Public Meetings

The Caribbean Fishery Management Council will publicly convene fact-finding meetings as follows, to compile information regarding complaints received on the operation of swordfish longliners in the Caribbean Sea and the selling of bycatch, by some of these longliners, in the U.S. Virgin Islands and Puerto Rican markets:

U.S. Virgin Islands—April 29, 7 p.m., Legislature Building, Conference Room, Charlotte Amalie, St. Thomas; April 30, 7 p.m., Legislature Building, Conference Room, St. Croix.

Puerto Rico—May 5, 9:30 a.m., Colegio de Ingenieros y Agrimensores de Puerto Rico, Nin and Skerret Streets, Roosevelt Development, Hato Rey; May 6, 2 p.m., Hotel Villa Parguera, Conference Room, La Parguera, Lajas.

Interested persons are invited to attend and participate. For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918; telephone: (809) 753-4926.

Dated: April 15, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8745 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting in Tampa, FL, April 30, 1986, to discuss the Coastal Migratory Pelagics and Swordfish Fishery Management Plan, habitat considerations, finance, personnel and other management matters. A detailed agenda will be available on or about April 18, 1986. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: April 15, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-8746 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Reestablishment

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of reestablishment.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA it has been determined that the reestablishment of the Public Advisory Committee for Trademark Affairs is in the public interest in connection with the performance of duties imposed on the Department by law.

SUPPLEMENTARY INFORMATION: The Committee was first established in September 1970, expired on January 5, 1986, and is now being reestablished. The Committee's purpose is to advise the Patent and Trademark Office concerning steps which can be taken to increase the efficiency and effectiveness of administration of the Trademark Act and to provide a continuing flow of knowledge from the private sector to the government in the field of trademarks.

As it was initially established, the Committee will continue to comprise the members of the Advisory Committee for Trademark Affairs of the United States Trademark Association. The membership is balanced and is selected by the President of said association, subject to the approval of the Assistant Secretary and Commissioner of Patents and Trademarks. The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Ellen J. Seeherman, Committee Control Officer, Office of the Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231, telephone: (703) 557-7464, or Suzette Kern, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4217.

Dated: April 14, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 86-8721 Filed 4-17-86; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Hungarian People's Republic

April 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 21, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 19, 1985 a notice was published in the **Federal Register** (50 FR 51739), which announced import restraint limits for wool textile products in Categories 444 (women's, girls' and infants' suits) and 448 (women's girls' and infants' trousers), among others, produced or manufactured in Hungary and exported during the current agreement year which began on January 1, 1986 and extends through December 31, 1986. The Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, under the terms of which these limits were established, also includes provision for the carryover of shortfalls from the previous agreement year in certain categories (carryover). Under the foregoing provision of the bilateral agreement and at the request of the Government of the

Hungarian People's Republic, the limits established for Categories 444 and 448 are being increased for carryover for goods exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 14, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 16, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain wool textile products, produced or manufactured in the Hungarian People's Republic and exported during 1986.

Effective on April 21, 1986, the directive of December 16, 1985 is hereby further amended to adjust the previously established limits for wool textile products in Categories 444 and 448, as provided under the terms of the bilateral agreement of February 15 and 25, 1983:[1]

Categories	Adjusted 1986 Limits [1]
444	5,681 dozen
448	21,514 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-8706 Filed 4-17-86; 8:45 am]
BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

Correction

In FR Doc. 86-8132, beginning on page 12538, in the issue of Friday, April 11, 1986 make the following corrections. On page 12539, first column, under "Commodities" first line, "Grown" should read "Gown".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Blue Ribbon Commission on Defense Management; Open Meeting

ACTION: Notice of Meeting Open to the Public.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting on May 5, 1986. From 2:00 p.m. until 6:00 p.m. on May 5, 1986, the Commission will receive public testimony concerning standards of conduct regulations for military and civilian personnel engaged in the defense acquisition process, including the administration of current standards by the Department of Defense. Among other matters, the meeting will address the so-called revolving door issue (i.e., post-employment conflict-of-interest disqualifications currently applicable to and proposed for Department of Defense acquisition personnel). The Commission's meeting, which will be open to the public, is scheduled to be in Room 2212, Rayburn House Office Building, Independence Avenue at South Capitol Street, SW., Washington, 20515. All interested persons are invited to attend the meeting and to file written statements on the subjects to be considered by the Commission. Written statements may be mailed to the Commission, 736 Jackson Place, NW., Washington, DC 20503, attention: Paul Stevens (Deputy Director and General Counsel). Three (3) copies of all written statements should be received not later than May 1, 1986.

Agenda: The Commission will meet in open session for public testimony on issues related to standards of conduct regulations for military and civilian personnel engaged in the acquisition of military equipment and materiel.

FOR FURTHER INFORMATION CONTACT: Herbert E. Hetu (Public Affairs), 1899 L Street, NW., Suite 400, Washington, DC 20036. Telephone: (202) 466-7080.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 14, 1986.

[FR Doc. 86-8738 Filed 4-17-86; 8:45 am]
BILLING CODE 3810-01-M

Working Group on Foreign Language and Area Studies; Open Meeting

AGENCY: Office of Research and Laboratory Management, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Working Group on Foreign Language and Area Studies of the DoD-University Forum will meet in open session on May 12, 1986, from 9:00 a.m. until 3:00 p.m., at the Stouffer Concourse Hotel—Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia.

The purpose of the meeting is to discuss progress of implementation of recommendations of the Report, "Beyond Growth: The Next Stage in Language and Area Studies."

Public attendance will be accommodated as space permits. Public attendees are requested to contact the DoD Office of Research and Laboratory Management before COB, May 7, 1986, to be advised of the meeting room and seating accommodations.

FOR FURTHER INFORMATION CONTACT: Don DeYoung, Office of Research and Laboratory Management, (202) 694-0205.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 15, 1986.

[FR Doc. 86-8737 Filed 4-17-86; 8:45 am]
BILLING CODE 3810-01-M

Organization of the Joint Chiefs of Staff; National Defense University Board of Visitors Meeting

AGENCY: National Defense University, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATE: The meeting will be held between 0830–1215 and 1340–1600, 4 June 1986.

ADDRESS: The meeting will be held in the Theodore Roosevelt Hall (Building 61), Fort Lesley J. McNair, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6000, 475–1145, to reserve space.

SUPPLEMENTARY INFORMATION: The discussion will include progress and plans for the National Defense University and the curricula, faculty, and students of the Industrial College of the Armed Forces, the National War College, and the Armed Forces Staff College. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 15, 1986.

[FR Doc. 86–8739 Filed 4–17–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Rehabilitation Training Program; Discretionary Grant Programs Closing, Dates for Transmittal of Fiscal Year 1986 New Applications

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: An application notice establishing closing dates for the transmittal of applications for fiscal year 1986 new grants was published on April 14, 1986 at 51 FR 12635–12637. In that notice an error was made in the date for closing.

On page 12636 under Part I—Programs Listed in chronological order the closing date should read: June 16, 1986. Under Part II—Application Announcements for each program the closing date for each program should also read June 16, 1986.

FOR FURTHER INFORMATION CONTACT: Delores I. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3322, Mary E. Switzer Building), Washington, DC, 20202. Telephone: (202) 732–1332.

(29 U.S.C. 774)

Dated: April 15, 1986.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86–8769 Filed 4–17–86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct of Employees; Conflict of Interests; Divestiture Requirements; Supervisory Employee Wavers

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. John R. Berg is under consideration for the position of Principal Deputy to the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy. Mr. Berg has pecuniary interests in Minnesota Mining and Manufacturing Company that were created as a result of his employment with the company.

It has been established to my satisfaction that requiring Mr. Berg to divest his interests in Minnesota Mining and Manufacturing Company would impose an exceptional hardship on him, and that the interests designated below are pension, insurance, or other similarly vested interests, within the meaning of section 602(c) of the Act, or are analogous thereto. Accordingly, I have granted Mr. Berg a waiver of the divestiture requirements of section 602(a) of the Act—

(1) For a period of 30 days after commencement of his employment by the Department, with respect to his interest in the 3M Medical Plan;

(2) For a period of 60 days after commencement of his employment by the Department, with respect to his interests in the Company Contribution Account of the Minnesota Mining and Manufacturing Company Voluntary Investment Plan;

(3) For a period of 75 days after commencement of his employment by the Department, with respect to his interests in the Minnesota Mining and Manufacturing Company Management Incentive Stock Option Program;

(4) For a period of 120 days after commencement of his employment by the Department, with respect to his interests in the Minnesota Mining and Manufacturing Company Profit Sharing Plan;

(5) For a period of 200 days after commencement of his employment by the Department, with respect to his interests in the Minnesota Mining and Manufacturing Company Payroll-Based Employee Stock Ownership Plan; and

(6) For the duration of his employment with the Department, with respect to his interests in the Minnesota Mining and Manufacturing Company Retirement Income Plan.

In accordance with section 208 of title 18, United States Code, Mr. Berg will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon the Minnesota Mining and Manufacturing Company unless his supervisor and the Counselor agree that his financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, in accordance with subsections (a) and (b) of section 606 of the Department of Energy Organization Act, Mr. Berg will be directed not to participate—

(1) For a period of one year after termination his employment with the Minnesota Mining and Manufacturing Company, in any Department proceeding in which the company is substantially, directly, or materially involved, other than a rulemaking proceeding having a substantial effect on numerous energy concerns; and

(2) For a period of one year after commencing service in the Department, in any Department proceeding for which he had direct responsibility, or in which he participated personally and substantially, within the previous five years while in the employment of the Minnesota Mining and Manufacturing Company;

unless the Secretary makes a written finding that the application of such prohibition would be contrary to the national interest.

Dated: April 11, 1986.

John S. Herrington,

Secretary of Energy.

[FR Doc. 86–8740 Filed 4–17–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 9241-001 et al.]

Surrender of Preliminary Permits; City Creek Associates, Inc., et al.

April 11, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. City Creek Associates, Inc.

[Project No. 9241-001]

Take notice that City Creek Associates, permittee for the proposed City Creek Hydro Project No. 9241, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 4, 1985, and would have expired on November 30, 1988. The project would have been located on City Creek in Salt Lake County, Utah. The permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 17, 1986.

2. Great Western Power and Light, Inc.

[Project No. 8751-001]

Take notice that Great Western Power and Light, Inc., permittee for the proposed Big Cottonwood Lower Project No. 8751, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 22, 1985, and would have expired on July 31, 1988. The project would have been located on Big Cottonwood Creek in Salt Lake County, Utah. The permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 17, 1986.

3. Great Western Power and Light, Inc.

[Project No. 8781-001]

Take notice that Great Western Power and Light, Inc., permittee for the proposed Battle Creek Hydro Project No. 8781, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 8, 1985, and would have expired on July 31, 1988. The project would have been located on Battle Creek in Utah County, Utah. The permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on March 17, 1986.

4. Public Utility District No. 1 of Lewis County, Washington

[Project No. 6014-001]

Take notice that Public Utility District No. 1 of Lewis County, Washington, Permittee for the Silver Creek Hydropower Project No. 6014, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6014 was issued on September 18, 1985, and would have expired on August 31, 1988. The project would have been located on Silver Creek in Lewis County, Washington.

The permittee filed the request on March 27, 1986.

5. Salt Lake Associates

[Project No. 9240-001]

Take notice that Salt Lake Associates, permittee for the proposed G.S.L. Causeway Hydro Project No. 9240, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 25, 1985, and would have expired on October 31, 1988. The project would have been located on Great Salt Lake in Box Elder County, Utah. The permittee states that a preliminary study found that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 17, 1986.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8761 Filed 4-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-83-002]

Gas Transport, Inc.; Compliance Filing

April 11, 1986.

Take notice that on April 4, 1986, Gas Transport, Inc. (Gas Transport) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4 in the above-captioned proceeding. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 8, 1986.

Gas Transport requests that the Commission make this tariff sheet effective on June 7, 1985, in compliance with Article III of the settlement agreement approved by the Commission at Docket No. RP82-83-000. In this regard, Gas Transport states that on June 7, 1985, the Commission granted Gas Transport certificate authorization at Docket No. CP85-456 and in that order also approved the T-1 rate schedule (First Revised Sheet No. 4) which was set forth as Exhibit P to the application. However, the tariff sheet was not also filed in Docket No. RP82-83-000.

Gas Transport also states that the purpose of this compliance filing is to insure an "effective tariff sheet" in order to perform blanket transportation services under Order No. 436 as requested by Gas Transport in Docket No. CP86-291.

Gas Transport also requests a waiver of any of the Commission's rules and regulations as well as the provisions of its tariff, that may be required to make First Revised Sheet No. 4 effective on June 7, 1985. Gas Transport states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 18, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8758 Filed 4-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-803-000; CP85-804-000; CP85-805-000; CP85-806-000; CP86-46-000; CP86-82-000; CP84-429-015; CP85-756-000; CP85-876-000]

Texas Eastern Transmission Corp., Consolidated Gas Transmission Corp., Equitable Gas Co., and Kentucky West Virginia Gas Co.; Availability of the Penn-Jersey Pipeline Project Environmental Assessment [1]

April 14, 1986.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmetal assessment (EA) on the above-referenced dockets. The staff has determined that construction and operation of the proposed facilities would not constitute a major Federal action significantly affecting the quality of the human environment. The Penn-Jersey Pipeline Project facilities include 147.1 miles of 24- through 42-inch-diameter pipeline loop and appurtenances. The facilities examined in the EA would be located in Ohio, West Virginia, Virginia, Pennsylvania, and New Jersey. A detailed listing of the counties affected in each state, except for modifications to an existing meter and regulator station in Loudoun County, Virginia, was published in the Federal Register on December 3, 1985 (50 FR 49598).[2] Alternatives are also evaluated.

The EA will be used in the regulatory decision-making process at the Commission and may be presented as evidentiary matter in formal hearings. Motions to intervene in the proceedings out of time can be filed with the Commission in accordance with the requirements of Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 CFR § 385.214(d). Anyone desiring to file a protest should do so in accordance with 18 CFR 385.211.

The EA has been placed in the public files of the Commission and is available for public inspection in the FERC Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. Copies have been sent to all parties to the proceeding; Federal, state, and local officials; newspapers of general circulation in the areas affected; known residences within 50 feet of the proposed pipeline's permanent right-of-way; and individuals who have requested it. Copies are available in limited quantities from the FERC Division of Public Information.

Anyone wishing to do so may file comments on the EA as soon as possible but no later than April 30, 1986. Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Additional information about the project is available from Mr. Kenneth D. Frye, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9039.

Kenneth F. Plumb.

Secretary.

[FR Doc. 86-8760 Filed 4-17-86; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice supersedes a prior notice issued April 9, 1986, in this docket.

[2] On March 18, 1986, Texas Eastern filed an application under Docket No. CP84-429-015 that proposed to construct a total of 3.66 miles of pipeline loop at six locations adjacent to areas previously identified in Pennsylvania. See 51 FR 10432.

[Docket Nos. ER86-399-000 et al.]

Alabama Power Co. et al.; Electric Rate and Corporate Regulation Filings

April 15, 1986.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. ER86-399-000]

Take notice that Alabama Power Company on April 9, 1986 tendered for filing (i) an Agreement for Partial Requirements and Complementary Service between it and the Alabama Municipal Electric Authority, and (ii) a Firm Power Purchase Contract between it and the Alabama Municipal Electric Authority. The Agreement for Partial Requirements Service specifies the terms and conditions under which APCO agrees to provide partial requirements service to Alabama Municipal Electric Authority and its member municipalities when the Authority obtains capacity from another supplier or source. The Firm Power Purchase Contract provides for a firm capacity sale by Alabama Power Company to the Alabama Municipal Electric Authority. The firm capacity sale is for a period of 180 months and provides for a prepayment of the capacity costs relating to production facilities of Alabama Power Company. The above agreements also provide for firm transmission service related to the firm capacity to be purchased by the Alabama Municipal Electric Authority from Alabama Power Company. Alabama Power Company proposes that the two agreements be allowed to become effective on or before June 9, 1986.

Comment date: April 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power and Light Company

[Docket No. ER85-563-001]

Take notice that on April 7, 1986, Arkansas Power and Light Company (AP&L) tendered for filing a compliance report pursuant to the Commission's order of February 21, 1986 directing AP&L to make refunds to its wholesale customers.

Comment date: April 24, 1986, in accordance with Standard Paragraph H at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER86-369-000]

Take notice that on April 9, 1986, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing a Supplement to its Rate Schedule FERC No. 51, an agreement to provide transmission service to the Power Authority of the State of New York (the "Authority"). The Supplement provides for an increase in the monthly transmission charge of $1.41 to $2.57 per kilowatt for transmission of power and energy sold by the Authority to the Long Island municipal systems of Freeport, Greenport and Rockville Centre (the "Municipals"). Con Edison has requested an effective date of June 1, 1986.

Con Edison states that copies of this filing have been served by mail upon the Authority and each of the Municipals.

Comment date: April 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

[Docket No. ER86-382-000]

Take notice that Consumers Power Company ("Consumers") on April 11, 1986 tendered for filing Consumers' Supplemental Agreement No. 4 to the Coordinated Operating Agreement with the City of Holland, Michigan dated as of January 1, 1986.

Supplemental Agreement No. 4 increases the rate charged for transmission service to 30¢/kW/week and 6¢/kW/day. Supplemental Agreement No. 4 also increases the rate for transfers of Emergency Energy to 2.5 mills/kWh.

The extent and use of transmission service and transfers of Emergency Energy among the parties for the next twelve months is not known at the present time, as such transactions will only be scheduled from time to time as load and capacity conditions on either

system dictate. Accordingly, it is not possible to estimate the transactions for such period.

Consumer state that copies of the filing were served on the City of Holland, Michigan and on the Michigan Public Service Commission.

Comment date: April 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER86-35-000]

Take notice that on April 8, 1986, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to section 204 of the Federal Power Act to issue, either on a secured or unsecured basis, short-term obligations and commercial paper, not to exceed in the aggregate $200,000,000 principal amount at any one time outstanding, and, in no case, to mature later than December 31, 1987.

Comment date: May 7, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Florida Power Corporation

[Docket No. ER 86-398-000]

Take notice that on April 9, 1986, Florida Power Corporation (Florida Power) tendered for filing two agreements between Florida Power and Florida Municipal Power Agency (FMPA). Florida Power presently provides partial requirements and all requirements resale service to the Cities of Bushnell, Leesburg, and Ocala, Florida pursuant to tariff. FMPA will become the all requirements resale service supplier to these cities. Florida Power will provide partial requirements resale service and other services to FMPA. The agreements are submitted for filing as rate schedules.

Pursuant to the first agreement, Florida Power will provide (1) partial requirements resale service, (2) transmission/distribution service, and (3) demand and energy losses service to FMPA. Pursuant to the second agreement, Florida Power will provide transmission/distribution service to FMPA for certain specified generation sources, for the duration of FMPA's ownership of those generation sources, on a take and pay basis.

Florida Power requests that the agreements with FMPA be made effective as rate schedules on May 1, 1986, and therefore, requests waiver of the sixty day notice requirement. Copies of the filing have been served on the Cities of Bushnell, Leesburg, and Ocala, Florida, Florida Municipal Power Agency, and the Florida Public Service Commission.

Comment date: April 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. EC82-4-000]

Take notice that on April 9, 1986, Illinois Power Company tendered for filing a motion to withdraw its application of December 14, 1981. In the application, Illinois sought the Commission's approval of a merger of its wholly owned subsidiary IP, Inc. with Mt. Carmel Public Utility Company.

Comment date: April 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER86-403-000]

Take notice that on April 9, 1986, Montaup Electric Company ("Montaup" or "the Company") tendered for filing rate schedule revisions which bring the M-11 rate schedules into conformity with letter orders in other dockets in two respects. First, they reduce the demand charges filed in both steps of the M-11 increase to exclude all purchased power capacity costs defined in the purchased power clause which is currently in effect under the Commission's order of February 28, 1986 approving a settlement in the M-10 proceeding (Docket No. ER85-106-000). The reduction is necessary to eliminate from the demand charge costs which are now being recovered through the purchased power clause. The reduced demand charges are supported in the testimony of Arthur A. Hatch and his Exhibit No. (MEC-407) included with the M-11 filing.

The reductions could not be made in the M-11 demand charges when originally filed because at that time the settlement containing the purchased power clause had not been approved. The Company requests that the first and second step reductions be allowed to become effective at the same time that the first and second steps of the M-11 increase are to become effective under the Commission's suspension order in this docket (the service date of the Millstone No. 3 unit for the first step and the later of July 5, 1986 or that service date for the second).

Second, the revisions incorporate the language permitting the Company to defer fuel cost savings from test generation which is currently in the M-10 rate schedules as accepted by letter order of April 3, 1986 in Docket No. ER86-288-000. The Company asks that these revisions be allowed to become effective on the service date of the Millstone No. 3 unit.

The Company requests wavier of the 60-day notice requirement to permit the effective dates requested above. The Company submits that good cause exists for such waiver in order to implement the Commission's letter orders accepting the purchased power clause and test power filings. Assuming Millstone No. 3 enters service on May 1, 1986 as presently scheduled the Company needs an order accepting this filing by June 12, 1986 to have the order in hand before issuing the first bills under the M-11 rate.

Comment date: April 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER86-385-000]

Take notice that on April 9, 1986, the Office of the Pennsylvania-New Jersy-Maryland (PJM) Interconnection filed, on behalf of the parties to the PJM Agreement, Revision No. 8 to Schedule 4.01 of that Agreement.

The purpose of this filing is to increase the rate applicable to capacity deficiency transactions determined in accordance with the PJM Agreement. The new rate is the become effective with the beginning of the next 12-month Planning Period on June 1, 1986. No changes in facilities are proposed in this filing.

Comment date: April 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER86-401-000]

Take notice that, on April 10, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of change of rates for the purchase of Replacement Capacity by the Cities of Anaheim ("Anaheim") and Riverside ("Riverside") from Edison under the provisions of the following rate schedules:

	Rate schedule FERC No.
City of Anaheim	95
City of Riverside	94

Edison requests waiver of the Commission's prior notice requirement and an effective date of February 19, 1986, for these rate changes.

Copies of this filing were served upon the Public Utilities Commission of the

State of California and all interested parties.

Comment date: April 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. The Washington Water Power Company

[Docket No. EC86-17-000]

Take notice that on April 10, 1986, The Washington Water Power Company, a Washington corporation, qualified to transact business in the states of Washington, Idaho and Montana with its principal business office in Spokane, Washington, filed an application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, seeking an order authorizing it to convey title of a 115kv transmission line located in Grant County, Washington to the Public Utility District No. 2 of Grant County, Washington.

Comment date: April 29, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8754 Filed 4-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-413-000 et al.]

Northern Natural Gas Company et al.; Natural Gas Certificate Filings

Take notice that the followings fillings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP86-413-000]

April 15, 1986.

Take notice that on April 2, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-413-000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to install and operate one small volume measurement station to accommodate natural gas delivered to Bernard T. Schafersman, a non-right-of-way grantor served by the local distribution company, Peoples Natural Gas Company, a division of Utilicorp United Inc. (Peoples) under the certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to install and operate one small volume measurement station in Dodge County, Nebraska, for delivery of gas to be used for residential and water heating purposes.

Northern states that deliveries to this small volume measurement station would be made within the existing firm entitlement of Peoples.

Comment date: May 30, 1986, in accordance with Standard Paragraph G. at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP86-418-000]

April 15, 1986.

Take notice that on April 4, 1986, Arkla Energy Resources, (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP86-418-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps and related jurisdictional facilities necessary to enable Arkla to deliver gas from several of its jurisdictional pipelines to consumers served by Arkansas Louisiana Gas Company (ALG), a division of Arkla, Inc., under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that AER proposes to construct and operate: (1) a sales tap on its Line 5 in Kay County, Oklahoma, to deliver gas to ALG for service to retail customer, Phillip Tannehill, who would use approximately 90 Mcf per year for domestic purposes; (2) a sales tap on its Line 2 in Custer County, Oklahoma, to deliver gas to ALG for service to a retail customer, Don Kelley, who would use approximately 240 Mcf per year for domestic purposes; (3) a sales tap on its Line AD in Pontotoc County, Oklahoma, to deliver gas to ALG for service to a retail customer, Terry Miller, who would use approximately 160 Mcf per year for domestic purposes.

AER states that the gas would be delivered from its general system supply which, it is stated, is adequate to provide the service. It is further stated that the customer sales would be billed at ALG's applicable retail rates as filed with the Oklahoma Corporation Commission.

Comment date: May 30, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Consolidated Gas Transmission Corporation; Texas Eastern Transmission Corporation

[Docket No. CP86-411-000]

April 15, 1986.

Take notice that on April 1, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Texas Eastern Transmission Corporation (Texas Eastern), One Houston Center, 1221 McKinney, Houston, Texas 77010, (Applicants) filed in Docket No. CP86-411-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicants to drill two new wells in 1986 and one new well in 1987 at their jointly-owned Oakford storage pool in Westmoreland County, Pennsylvania, and to construct and operate related pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to drill two new wells, to be known as Well Nos. JW-267 and JW-269, in the northern end of the Murrysville sand reservoir in 1986 and to construct and operate related pipeline facilities to connect the new wells and existing Well No. JW-265 to the storage pipeline system for withdrawal use. In 1987, Applicants propose to drill one

new well, to be known as Well No. JW–268, in the northern end of the Murrysville sand and to construct and operate related pipeline facilities to connect it to the storage pipeline system for withdrawal use.

Applicants propose to revise the Murrysville sand reservoir boundaries because data indicate that gas has migrated into the northern end of the formation. Applicants indicate that the proposed wells and facilities would aid in the recovery of gas which has migrated into the area and to monitor gas reservoir pressure in this portion of the reservoir.

Applicants state that the estimated cost of the proposal is $1,170,000. Consolidated would pay for all related costs and seek reimbursement from Texas Eastern for its share, it is explained.

Comment date: May 9, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP86–412–000]

April 11, 1986.

Take notice that on April 2, 1986, K N Energy, Inc. (K N), P. O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–412–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service and related facilities in Fremont County, Wyoming, regarding a certain sale, exchange and transportation agreement (Agreement) with ANR Pipeline Company (ANR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N states that it seeks to abandon the exchange and transportation service and would terminate its purchase of gas from ANR thereunder. K N further states that its pipelines connecting the subject gas from the wellhead to K N's pipeline system would be abandoned by transferring them to the producer/operator of the wells, and that ANR would construct an interconnection between the transferred lines and its existing gathering line. K N asserts that this would eliminate the need for the transportation and exchange service with K N. K N further asserts that it would have sufficient gas supplies for its customers without the purchase from ANR.

Comment date: May 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment data file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise adivsed, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–8755 Filed 4–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–4953–002, et al.]

Sun Exploration & Production Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

April 15, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 29, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-4953-002, D, Apr. 7, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	United Gas Pipe Line Company, Red Fish Bay & Mustang Island Fields, Nueces County, Texas.	(1)	
G-4953-003, D, Apr. 7, 1986	....do	....do	(2)	
G-5716-031, D, Mar. 28, 1986	Mobile Oil Corporation, Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, Hugoton Field, Stevens County, Kansas.	(3)	
G-7642-015, D, Mar. 28, 1986	....do	....do	(3)	
G-7645-009, D, Mar. 17, 1986	....do	Northwest Central Pipeline Corporation, Hugoton Field, Texas County, Oklahoma.	(3)	
G-13634-003, D, Apr. 7, 1986	Sun Exploration & Production Co	Northern Natural Gas Company, Camerick Gas Area Field, Beaver County, Oklahoma.	(4)	
G-16225-001, D, Mar. 27, 1986	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Transcontinental Gas Pipe Line Corp., South Duson Field, Lafayette Parish, Louisiana.	(5)	
G-16228-002, D, Mar. 27, 1986	....do	United Gas Pipe LIne Company, S. Duson, Ridge & N. Leroy Fields, Lafayette & Vermilion Parishes, Louisiana.	(6)	
G-16380-000, D, Mar. 31, 1986	The Superior Oil Company, Nine Greenway Plaza — Suite 2700, Houston, Texas 77046.	Transcontinental Gas Pipe Line Corp., Vermillion Blocks 71 & 76, Offshore, Louisiana, Federal Domain.	(7)	
CI65-837-001, D, Mar. 27, 1986	Cities SErvice Oil & Gas Corp., P.O. Box 300, Tulsa, Okla, 74102.	Panhandle Eastern Pipe LIne Company, N.E. Sampsel Field, Cimarron County, Oklahoma.	(8)	
CI65-837-003, D, Apr. 7, 1986	....do	....do	(9)	
CI66-781-000, D, Apr. 7, 1986	Sun Exploration & Production Co	Northwest Central Pipeline Corporation, Bishop Field, Roger Mills County, Texas.	(10)	
CI67-734-000, D, Apr. 7, 1986	....do	Northern Natural Gas Company, Mocane-Laverne Gas Area, Ellis County, Oklahoma.	(10)	
CI67-1032-000, D, Apr. 7, 1986	....do	Mountain Fuel Supply Co.; North Craig Field, Moffat County, Colorado.	(10)	
CI67-1022-001, D, Apr. 7, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Mountain Fuel Supply Co., North Craig Field, Moffat County County, Colorado.	(11)	
CI168-880-000, D, Mar. 27, 1986	Texas Producing Inc. (Succ. in Interest to Getty Oil Company), P.O. Box 52332, Houston, Texas 77052.	Natural Gas Pipeline Company of America, Tubb Estate 1-25 Well, Winkler County, Texas.	(12)	
CI69-80-000, D, Apr. 2, 1986	The Superior Oil Company, Nine Greenway Plaza — Suite 2700, Houston, Texas 77046.	Natural Gas Pipeline Company of America, Tubb Estate 1-25 Well, Winkler County, Texas.	(13)	
CI70-458-001, D, Mar. 28, 1986	Sun Exploration & Production Co	Florida Gas Transmission Company, Lochridge Field, Brazoria County, Texas.	(14)	
CI84-545-001, D, Apr. 7, 1986	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Amoco Gas Company, South Timballer Block 161, Offshore Louisiana.	(15)	
CI86-290-000, B, Mar. 26, 1986	Frontier Fuels, Inc., a Delaware Corp. (Succ. in Interest to Fluor Oil & Gas Corp.), 615 Midland Tower Bldg., 223 West Wall Street, Midland, Texas 79701.	Natural Gas Pipeline Company of America, Winkler County, Texas.	(16)	
CI86-291-000, B, Mar. 27, 1986	TXO Production Corp., First City Center, 1700 Pacific Avenue, Dallas, Texas 75201.	Panhandle Eastern Pipe LIne Company, Woods County, Oklahoma.	(17)	
CI86-292-000 (CI72-836), B, Mar. 27, 1986.	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	United Gas Pipe LIne Company, Carthage Field, Panola County, Texas.	(18)	
CI86-294-000 (CI73-427), B, Mar. 28, 1986.	Sun Exploration & Production Co	Northern Natural Gas Company, Tiger Ridge Field, Hill and Blaine Counties, Montana.	(19)	
CI86-298-000 (CI83-115-000) B, Mar. 28, 1986.	Amoco Production Company, P.O. Box 3092, Houston, Texas 77253.	Tennessee Gas Pipeline Company, Tombal Southeast Field, Harris County, Texas.	(20)	
CI86-299-000 (G-13221), B, Apr. 1, 1986.	Union Texas Petroleum Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	United Gas Pipe Line Company, Abbeville Field, Vermilion Parish, Louisiana.	(21)	
CI86-300-000, B, Apr. 1, 1986	Southland Royalty Company, 200 Interfirst Tower, Fort Worth, Texas 76102.	Cities Service Oil Company, Milnesand Field, Roosevelt County, New Mexico.	(22)	
CI86-301-000, B Apr. 2, 1986	ENSTAR Corporation, P.O. Box 2120, Houston, Texas 77252-2120.	Michigan Wisconsin Pipeline Company, Calcasieu Lake Field, Cameron Parish, Louisiana.	(22)	
CI86-303-000, B, Apr. 3, 1986	Gary R. Reagan P.O. Box 52168, Lafayette, La. 70505.	Transcontinental Gas Pipe Line Corp., Gueydan Field, Vermilion Parish, Louisiana.	(24)	
CI86-304-000, A, Apr. 4, 1986	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Columbia Gas Transmission Corporation, Grand Isle Block 16 Field, OCS-G-0034, Well K-24, Reservoir B4, T-3, Offshore Louisiana.	(25)	
CI86-305-000, A, Apr. 4, 1986	....do	Columbia Gas Transmission Corporation, Grand Isle Block 18 Field, OCS-G-0032, Well No. 3, C-6 Sand Reservoir X, Offshore Louisiana.	(25)	
CI86-306-000, A, Apr. 4, 1986	....do	Columbia Gas Transmission Corporation, West Delta Block 117 Field, OSC-G-1096, Well B-8, I-15 Sand, Reservour B-3-B, Offshore Louisiana.	(25)	
CI86-308-000 (CI77-169), B, Apr. 7, 1986.	Transwestern Gas Supply Co.; P.O. Box 2521, Houston, Texas 77252.	Transwestern Pipeline Company, Nash Draw (Atoka) Field, Eddy County, New Mexico.	(26)	
CI86-309-000 (CI76-455), B, Apr. 7, 1986.	....do	Transwestern Pipeline Company Red Hills Field, Lea County, New Mexico.	(26)	
CI86-310-000 (CI76-400), B, Apr. 7, 1986.	....do	Transwestern Pipeline Company, Taurus Field, Ward County, Texas.	(26)	
CI86-311-000 (CI76-40), B, Apr. 7, 1986.	....do	....do	(26)	
CI86-312-000 (CI75-686), B, Apr. 7, 1986.	....do	Transwestern Pipeline Company, Potash Field, Eddy County, New Mexico.	(26)	
CI86-313-000 (CI75-617), B, Apr. 7, 1986.	....do	Transwestern Pipeline Company, Apollo Field, Winkler County, Texas.	(26)	
CI86-314-000 (CI75-98), B, Apr. 7, 1986.	....do	....do	(26)	
CI86-315-000 (CI77-170), B, Apr. 7, 1986.	Transwestern Gas Supply Company P.O. Box 2521, Houston, Texas 77252.	Transwestern Pipeline Company, Apollo Field, Winkler County, Texas.	(26)	
CI86-316-000 (CI77-671), B, Apr. 7, 1986.	....do	....do	(26)	
CI86-317-000 (CI78-574), B, Apr. 7, 1986.	....do	Transwestern Pipeline Company, Rodgers Field, Ward County, Texas.	(26)	
CI86-318-000 (CI72-356), B, Apr. 7, 1986.	....do	Transwestern Pipeline Company Gomez Field, Pecos County, Texas.	(26)	
CI86-319-000 (CI82-1352), B, Apr. 7, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Arkla Energy Resources, Scottsville North Field, Harrison County, Texas.	(27)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
(CI64-26-017, Apr. 3, 1986	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Texas Eastern Transmission Corporation, False River Area, Pointe Coupee Parish, Louisiana.	([28])	

[1] Property sold to Delaware Royalty Company, Inc.
[2] Property sold to Cities Service Oil and Gas Corporation.
[3] To release gas for irrigation fuel.
[4] Property sold to Exxon Corporation.
[5] Service has seased from acreage involved.
[6] Release/Surrender or assignment of certain acreage.
[7] Vermilion Block 71 lease expired of its own terms on 8-9-85. Vermilion Block 76 lease was assigned to Shell Offshore Inc., *et al.*
[8] Lease Nos. 28598, 28603, 28599 and 28695-C were terminated in 1979. Cities' interest in these leases (except 28695-C) down to 5073' was assigned to An-Son Corporation on 9-8-66.
[9] Lease Nos. 29191, 29191-A, 29192, 28695-A and 28695-B were terminated in 1979.
[10] Property sold to Childress Royalty Company.
[11] Property sold to Kaiser-Francis Oil Co.
[12] Interim sale of sour gas while interstate purchaser is in the process of trying to get a permit for a sweetening facility.
[13] Gas from Tubb Estate No. 1-25 Well is shut-in due to purchaser's inability to construct a treatment facility. Gas will be sold intrastate to Lone Star Gas Company subject to NGPL's right to terminate that sale.
[14] Property sold to Great Western Drilling Company.
[15] Purchaser has agreed to release volumes in excess of 5000 Mcf per day.
[16] Not used.
[17] Uneconomical.
[18] The purchaser, United, has notified Phillips that it will cease permanently the taking of all gas *not* subject to the NGA and will temporarily, through the Fall of 1986, suspend all purchases of gas subject to the NGA. Upon checking production, Phillips finds that the last purchase by United from the two leases covered by the certificate occurred during July, 1982 when production declined to the point that all production was being consumed on the lease. Currently the Hopkins lease produces 5 Mcf/d and the Lovis produces approximately 5.5 Mcf/d. Further, the replacement contract dated 3-1-77 will expire by its own terms on 4-2-86.
[19] Sun sold all of its interest in the Tiger Ridge Gas Unit effective 12-1-83 and no longer owns an interest in any of the lands.
[20] The only well subject to the Contract is classified as a NGPA Sec. 102 well and has been shut-in since 10-27-85, at the request of Buyer due to excessive carbon dioxide content being in the delivered gas stream. Seller does not desire to treat the gas to the quality specifications as set forth in the Contract because of the related high cost of the equipment and fuel. In lieu of treating the gas, Seller and Buyer have agreed to release such gas from the Contract in accordance with Section 1-A Quality of the Contract.
[21] The gas contract expired in 1979. Purchaser will not agree to rollover contract. All wells delivering gas under the authority of this certificate have been plugged and abandoned.
[22] During 1975, Cities disconnected its pipelines and ceased taking gas production under contract dated 1-1-73. In accordance with the provisions thereof and by mutual consent of the parties thereto, the contract was terminated on 1-1-83.
[23] Applicant released all but 40 acres of its interest in the lease dedicated to contract dated 11-30-72.
[24] Gas production has ceased and no further development is planned; Pipe Line purchaser wishes to remove its facilities previously used to receive gas from the now depleted well.
[25] Applicant is filing under Contract dated 3-18-86.
[26] Assignment of acreage to Memorial Exploration Company effective 12-16-85.
[27] Anita Bookout Unit was sold 5-1-85 and was the only producing property under contract.
[28] Applicant is filing for an additional delivery point.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-8759 Filed 4-17-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP71-15-020]

East Tennessee Natural Gas Co., Filing of Pipeline Refund Report

April 15, 1986.

Take notice that on January 27, 1986, East Tennessee Natural Gas Co. (East Tennessee) filed a refund report with the Federal Energy Regulatory Commission. The Commission issued a Notice of Filing Of Pipeline Refund Reports on February 7, 1986, which included East Tennessee's. However, the refund report was referenced with the wrong docket number of RP81-54-023. The correct docket number is RP71-15-020.

Any person wishing to do so may submit comments in writing concerning the subject refund report. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before April 25, 1986. A copy of the respective filing is on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-8757 Filed 4-17-86; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3005-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed April 07, 1986 Through April 11, 1986. Pursuant to 40 CFR 1506.9.

EIS No. 860137, FSuppl, FHW, MD, National Freeway/US 48 Gap Completion, Wolfe Mill to M.V. Smith Road, Construction, Allegany County, Due: May 19, 1986, Contact: Edward Terry (301) 952-4010.

EIS No. 860142, Draft, FHW, GA, I-20 Widening, Hill Street to Columbia Drive, Fulton and Dekalb Cos., Due: June 2, 1986, Contact: Louis Papet (404) 347-4751.

EIS No. 860143, Final, IBR, CA, Freeman Diversion Improvement Project, Construction and Operation, Santa Clara River, Combat of Seawater Intrusion, Ventura, County, Due: May 19, 1986, Contact: Rick Breitenbach (916) 978-5130.

EIS No. 860144, Final, AFS, TN, NC, Cherokee National Forest, Land and Resource Management Plan, Due: May 19, 1986, Contact: Donald Rollens (615) 476-9700.

EIS No. 860145 Final, AFS, MT, Lolo National Forest, Land and Resource Management Plan, Due: May 19, 1986, Contact: Orville Daniels (406) 329-3804.

EIS No. 860146 Final, AFS, MT, Beaverhead National Forest, Land and Resource Management Plan, Due: May 19, 1986, Contact: Ronald Prichard (406) 683-3900.

EIS No. 860147, Draft, ICC, NY, CT, Long Island Sound Ferry Service Operations, Connecticut to Long Island, NY, License Application, Due: June 2, 1986, Contact: Dana White (202) 275-6869.

EIS No. 860148 Final, BLM, ID, Shoshone and Sun Valley Wilderness Study Area, Wilderness Designation, Due: May 19, 1986, Contact: Charles Haszier (208) 886-2206.

EIS No. 860149, Draft, IBR, CA, Grass Valley Creek Debris Dam Sediment Control Project, Construction and Operation, Trinity River, Trinity County, Due: June 10, 1986, Contact: David Gore (916) 978-4966.

EIS No. 860150, Draft, BLM, OR, Baker Resource Area, Resource Management Plan, Baker and Malheur Cos., Due: July 14, 1986, Contact: Sam Montgomery (503) 523-6337.

EIS No. 860151, Draft, AFS, MT, Deerlodge National Forest, Noxious Weed and Poisonous Plant Control Program, Due: June 2, 1986, Contact: David Ruppert (406) 496-3368.

EIS No. 860152, Draft, DOE, CO, Climax Uranium Mill Site, Remedial Actions and Cleanup of Radioactive Contaminated Material, Mesa County,

Due: June 2, 1986, Contact: John Themelis (505) 844–3941.

EIS No. 860153, Final, DOE, NY, Niagara Falls, Storage Site, Long Term Management of the Existing Active Wastes and Residues, Niagara County, Due: May 19, 1986, Contact: Lowell Campbell (615) 576–1052.

Amended Notices

EIS No. 860036, Draft, BLM, UT, Utah Statewide Wilderness Study Areas, Wilderness Designation, Due: June 2, 1986, Published FR 4–11–86—Review period extended.

EIS No. 860145, Draft, FHW, WV, Chelyan Bridge and Approach Roads Replacement, US 60 to WV–61, Kanawha County, Due: June 2, 1986, Published FR 4–11–86—Review period reestablished.

Dated: April 15, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–8787 Filed 4–17–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3005–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 31, 1986 through April 4, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–AFS–K65074–AZ, Rating E02, Coconino Nat'l Forest, Land and Resource Mgmt. Plan, AZ. **SUMMARY:** EPA expressed environmental objections because proposed management activities, especially grazing, could increase the rate of water quality degradation. The DEIS did not sufficiently explain how poor riparian/watershed conditions will be improved while outputs are increased.

ERP No. D–FHW–E40691–FL, Rating EC2, Northwest Hillsborough Expressway Construction, I–275 to FL–597/Dale Mabry Highway, FL. **SUMMARY:** EPA is concerned about potential wetland losses (65–67 acres), noise impacts, and the air quality evaluation. The FEIS should include more information regarding a wetland mitigation plan, noise mitigation, and include an air quality total hydrocarbon pollutant burden analysis, with an intersectional analysis using a queuing model.

ERP No. D–SCS–G36132–TX, Rating LO, Choctaw Creek Watershed Protection, Flood Prevention and Recreation Plan, TX. **SUMMARY:** EPA expressed no objection to the proposed action as described. DPA requested further coordination with the Corps of Engineers to clarify applicability of 404 jurisdiction.

ERP No. D–VAD–E81026–FL, Rating LO—Alter. 13A, 7E, 7F; E01—Alter. 6B; Northern Palm Beach County Veterans Administration Medical Center Construction, FL. **SUMMARY:** EPA determined in its review of the DEIS, that although all five of the sites considered contain wetland areas, three of the sites (13a, 7e and 7f) can accommodate the facility in an environmentally acceptable manner. This can be accomplished by incorporating the wetland areas into the overall site design and enhancing them by routing the stormwater runoff. The two remaining sites because of site and wetland configuration are less acceptable.

Final EISs

ERP No. F–COE–E67003–FL, Occidental Wetlands Phosphate Mining Operations, Dredge and Fill Permit, Sect. 404 Permit, FL. **SUMMARY:** EPA's review concluded that the environmental and economic consequences of an additional mining plan, Alternative E, are fully discussed. This new alternative was developed, because of concerns expressed during review of the DEIS. EPA supports Alternative E as it avoids important wetland areas. EPA continues to recommend denial of Alternative B to insure protection of the Suwannee River ecosystem.

ERP No. FS–COE–F36075–WI, State Rd. and Ebner Coulees Flood Control Project, Modifications, WI. **SUMMARY:** EPA's review resulted in a lack of objection to the proposed project.

ERP No. F–FHW–G40079–NM, San Mateo Boulevard Improvements, Gibson Blvd. to Zuni Rd. Southeast, Right-of-Way Acquisition, NM. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS. EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. F–OSM–J01067–MT, CX Ranch Mine Construction and Operation, Permit, MT. **SUMMARY:** EPA made no formal comments. EPA reviewed the FEIS and found the project to be satisfactory.

ERP No. F–SCS–G34042–OK, North Deer Creek Watershed Multipurpose Plan, OK. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS. EPA has not identified any new issues of concern with regard to the proposed action.

Amended Notices

The following reviews should have appeared in the FR Notices published on January 31, 1986 and February 7, 1986, respectively.

ERP No. F–AFS–K61081–CA, Peppermint Mtn. Resort Development Plan, Sequoia Nat'l Forest, CA. **SUMMARY:** EPA expressed concerns about potentially significant air quality impacts from the project, and requested the opportunity to comment on subsequent air quality analyses and mitigation plans.

ERP No. FA–COE–K36013–CA, Walnut Creek Flood Control Plan, Upper Pine Creek Channel Modification Update, CA. **SUMMARY:** EPA's review indicated that the final supplemental EIS adequately assessed the project's environmental impacts and outlined sufficient mitigation measures; therefore, EPA had no comments to offer.

Dated: April 15, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–8788 Filed 4–17–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0132
Title: Cost Allocation Plan

Abstract: Cost allocation plan (indirect costs) provides the means of identifying, accumulating and distributing allowable indirect costs related to a grant program.

Type of Respondents: State or Local Governments
No. of Respondents: 56
Burden Hours: 112

Copies of the above information collection request and supporting

documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86–8717 Filed 4–17–86; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

April 15, 1986.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880)

Request for OMB Approval To Revise the Following Report

1. Report title: Reports of Condition and Income

Agency form number: FFIEC 031—034

OMB Docket number: 7100–0036

Frequency: Quarterly

Reporters: State member banks

Small businesses are affected.

General description of report: This informationi collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

State member banks are required to file detailed schedules of assets, liabilities, and capital accounts in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed revisions to the June 1986 CALL Report consist of: (1) The deletion of Column D from Schedule RC–N; (2) the addition of a new memoranda item entitled, "Restructured loans and leases" to Schedule RC–N; (3) the addition of an item entitled, "Loans and leases restructured and in compliance with modified terms" to Schedule RC–C; (4) and deletion from the Income Statement of memoranda item 5 entitled, "Income taxes applicable to gains (losses) on securities not held in trading accounts."

Board of Governors of the Federal Reserve System, April 15, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–8797 Filed 4–17–86; 8:45 am]

BILLING CODE 6210–01–M

Old Kent Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 9, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Old Kent Financial Corporation,* Grand Rapids, Michigan; to merge with American National Holding Company, Kalamazoo, Michigan, thereby indirectly acquiring American National Bank in Western Michigan, Allegan, Michigan; American National Bank in Battle Creek, Battle Creek, Michigan; American National Bank and Trust Company of Michigan, Kalamazoo, Michigan; Ludington Bank and Trust Company, Ludington, Michigan; American Bank of Niles, National Association, Niles, Michigan; American National Bank in Portage, Portage, Michigan; Central National Bank of St. Johns, St. Johns, Michigan; American National Bank—West, South Haven, Michigan; American Bank of Three Rivers, National Association, Three Rivers, Michigan.

Old Kent Financial Corporation has also applied to acquire Superior Life Insurance Company, Phoenix, Arizona, and thereby underwrite insurance related to extensions of credit by a bank holding company or its subsidiaries.

Board of Governors of the Federal Reserve System, April 15, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–8798 Filed 4–17–86; 8:45 am]

BILLING CODE 6210–01–M

South County Bancshares, Inc.; Application To Engage De Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulatory Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifyng specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1986.

A **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *South County Bancshares, Inc.*, Ashland, Missouri; to engage in the sale of Group Life Insurance in a place that has less than 5,000 in population, pursuant to section 4(c)(8)(C)(i) of the Bank Holding Company Act. This activity will be conducted in Ashland, Missouri, and the surrounding area.

Board of Governors of the Federal Reserve System, April 15, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-8799 Filed 4-17-86; 8:45 am]

BILLING CODE 6210-01-M

Stone City Bancshares, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 12, 1986.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Stone City Bancshares, Inc.*, Bedford, Indiana; to acquire at least 51 percent of the voting shares of First National Bank of Paoli, Paoli, Indiana.

Board of Governors of the Federal Reserve System, April 15, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-8800 Filed 4-17-86; 8:45 am]

BILLING CODE 6210-01-M

National Westminster Bank PLC; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Goverors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 9, 1986.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC*, London, England, and *Natwest Holdings, Inc.*, New York, New York; to engage *de novo* through their subsidiary County Natwest Government Securities, Inc., New York, New York, in underwriting, dealing in and brokering obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, and, as an incident thereto, employing hedging devices to manage interest rate risk, pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-8714 Filed 4-17-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 11, 1986.

Health Care Financing Administration

(Call 301-594-8650 for copies of packages)
Subject: Withhold Medicare payments to recover Medicaid overpayment—Extension—HCFA-R-21—(0938-0287)
Respondents: States
Subject: Independent Renal Dialysis Facility Cost Report—Reinstatement—HCFA-265—(0038-0236)
Respondents: Independent End-Stage Renal Dialysis Facilities
Subject: Social Security Report of State Buy-In Problem—Extension—HCFA-1957 (0938-0035)
Respondents: Individuals, States, Federal Agencies
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

(Call 202-472-4415 for copies of packages)
Subject: Certification of Maintenance of Effort—Existing Collection
Respondents: States
OMB Desk Officer: Judy A. McIntosh

Social Security Administration

(Call 301-594-8650 for copies of packages)
Subject: Statement Regarding Student's School Attendance—Extension—SSA 2434—(0960-0113)
Respondents: Individuals
Subject: Disability Determination and Transmittal Existing Collection
Respondents: State or Local Governments
Subject: Explanation of Determination—Existing Collection
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh

Public Health Services

(Call 202-245-2100 for copies of packages)

Center for Disease Control

Subject: Weekly Morbidity and Mortality Reports—Revision—(0920-0014)
Respondents: State or Local Governments
Subject: Inventory of Union Records Systems—New
Respondents: Businesses

Office of Assistant Secretary for Health

Subject: National Survey of Family Growth, Cycle IV—Revision—(0937-0104)
Respondents: Individuals or Households
Subject: Application and Related Forms for the Operation of the National Death Index—Extension—(0937-0088)
Respondents: State and local governments; businesses; Federal agencies; and non-profit institutions
OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: April 15, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-8748 Filed 4-17-86; 8:45 am]

BILLING CODE 4150-04-M

Private/Public Sector Advisory Committee on Catastrophic Illness; Meetings

Notice is hereby given, pursuant to Pub. L. 92-463, that the Private/Public Sector Advisory Committee on Catastrophic Illness will hold meetings, as announced in the **Federal Register** on Tuesday April 15, 1986, Volume 51, Number 72.

The locations of the announced meetings in Dallas and Chicago are as follows:

Date: May 14, 1986.
Time: 9:00 a.m. until 4:00 p.m.
Place: Judge's Chambers, Judge Barefoot Sanders, Room 15-B16, 1100 Commerce Street, Dallas, Texas.
Contact Person: Nancy Hobbs, (202) 245-2641.

Date: July 30, 1986.
Time: 9:00 a.m. until 4:00 p.m.
Place: Ceremonial Courtroom, U.S. District Court, 2503 A, Federal Building, 219 South Dearborn, Chicago, Illinois.
Contact Person: Nancy Hobbs, (202) 245-2641.

Dated: April 14, 1986.

Tom Burke,

Chief of Staff.

[FR Doc. 86-8749 Filed 4-17-86; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 86M-0138]

American Medical Electronics, Inc.; Premarket Approval of Physio-Stim ™ (Bone Growth Stimulator)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by American Medical Electronics, Inc., Dallas, TX, for premarket approval, under the Medical Device Amendments of 1976, of Physio-Stim ™ (bone growth stimulator). After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by May 19, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFS-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On February 12, 1985, American Medical Electronics, Inc., Dallas, TX 75244, submitted to CDRH an application for permarket approval of the Physio-Stim ™ (bone growth stimulator). The device is a noninvasive osteogenesis therapy system intended for treatment of an established nonunion acquired secondary to trauma, excluding vertebrae and all flat bones, where the

width of the nonunion defect is less than one-half the width of the bone to be treated. A nonunion is considered to be established when a minimum of 9 months has elapsed since injury and the fracture site shows no visibly progressive signs of healing for a minimum of 3 months (no change in the fracture callus). The Physio-Stim ™ consists of two models: Physio-Stim ™ I (Model 6000) has separate control and portable battery modules, and Physio-Stim ™ II (Model 7000) integrates microprocessor control circuits with a battery pack into a single unit with a liquid crystal display of major operating enunciators.

On November 25, 1985, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 21, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH. Contact: Nirmal K. Mishra (HFZ–410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under §10.33(b) (21 CFR 10.33(b)).

A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 19, 1986, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 10, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–8734 Filed 4–17–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86G–0119]

Novo Laboratories, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 6G0309) has been filed on behalf of Novo Laboratories, Inc., proposing that an immobilized glucose isomerase enzyme preparation derived from *Streptomyces murinus* is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by June 17, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 6G0309) has been filed on behalf of Novo Laboratories, Inc., P.O. Box D, 50 Danbury Rd., Wilton, CT 06897–0820. This petition proposes to affirm that an immobilized glucose isomerase enzyme preparation derived from *Streptomyces murinus* used in the production of high fructose corn syrup is generally recognized as safe (GRAS) as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Interested persons may, on or before June 17, 1986, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 11, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–8732 Filed 4–17–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0147]

RohmTech, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 3A3715) proposing that the food additive regulations be amended to provide for the safe use of pectin glycosidase derived from *Aspergillus alliaceus* for use as a macerase for the manufacture of fruit and vegetable pulp and pulp concentrates.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Rederal Register of June 17, 1983 (48 FR 27836), FDA published a notice that it had filed a petition (FAP 3A3715) from RohmTech, Inc., 1270 Avenue of the Americas, New York, NY 10020, that proposed to amend the food additive regulations to provide for the safe use of pection glycosidase derived from *Aspergillus alliaceus* for use as a macerase for manufacture of fruit and vegetable pulp and pulp concentrates. RohmTech, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 4, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-8733 Filed 4-17-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-12846, AA-12848, AA-6675-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to The King Cove Corporation for approximately 27 acres. The lands involved are in the vicinity of King Cove, Alaska, within T. 59 S., R. 87 W., and Tps. 57 and 58 S., R. 88 W., Seward Meridian, Alaska.

A notice of the decisions will be published once in the Aleutian Eagle and once a week for four (4) consecutive weeks in the Anchorage Times. Copies of the decisions may be obtained by contacting the the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decisions shall have until May 19, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-8682 Filed 4-17-86; 8:45 am]

BILLING CODE 4310-JA-M

[NM-50814]

New Mexico; Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In an exchange of lands under the provisions of section 206 of the Act of October 21, 1976, (43 U.S.C. 1716 [1976]), the following lands (surface estate only) in Taos County, New Mexico, were reconveyed to the United States:

New Mexico Principal Meridian

T. 29 N., R. 10 E.,
- Sec. 1, lots 1-4, inclusive, S½N½, and N½S½;
- Sec. 6, split diagonally from NE corner to SW corner and includes land from SE corner to diagonal line;
- Sec. 8, E½;
- Sec. 9, S½S½;
- Sec. 17, NE¼NW¼ and W½NW¼;
- Sec. 22, N½NE¼ and NE¼;
- Sec. 23, N½N½;
- Sec. 25, NE¼ and SW¼;
- Sec. 26, SE¼NE¼ and N½SE¼;
- Sec. 35.

T. 30 N., R. 10 E.,
- Sec. 24, S½N½ and S½;
- Sec. 25, N½;
- Sec. 26, S½NE¼.

T. 28 N., R. 11 E.,
- Sec. 7, lots 1-4, inclusive, E½, and E½W½.

T. 29 N., R. 11 E.,
- Sec. 30, lot 1 and NE¼NW¼;
- Sec. 31, lots 1 and 2, NE¼, and E½NW¼;
- Sec. 33, N½.

T. 30 N., R. 11 E.,
- Sec. 19, lots 3 and 4, and E½SW¼.

T. 31 N., R. 11 E.,
- Sec. 21, W½E½ and W½;
- Sec. 29;
- Sec. 31, lots 1-4, inclusive, E½, and E½W½;
- Sec. 31, lot 1, N½NE¼, and NE¼NW¼.

The lands described aggregate 7178.75 acres, more or less.

At 10 a.m. on May 22, 1986, the lands shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on May 22, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. Ownership of the mineral estate has been and remains in the United States for all the lands described except Lots 3, 4, S½NW¼, N½SW¼, Section 1; S½S½, Section 9; NE¼NW¼, W½NW¼, Section 17, T. 29 N., R. 10 E., NMPM; N½N½, Section 25, T. 30 N., R. 10 E., NMPM; and Lots 1, 2, NE¼, E½NW¼, Section 31, T. 29 N., R. 11 E., NMPM.

Dated: April 7, 1986.

David A. Jones,

State Director, Acting.

[FR Doc. 86-8681 Filed 4-17-86; 8:45 am]

BILLING CODE 4310-FB-M

[NM 64778]

Realty Actions; Direct Sale of Public Land in Dona Ana County, NM

The following described parcel of public land has been examined and identified as suitable for direct sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T. 23 S., R. 1 W., NMPM
- Sec. 31: Lots 14 to 18, inclusive, and 20, 21, and 22.

The subject lands, comprising approximately 139.9 acres, will be offered to the Dona Ana County Commissioners at the appraised fair market value of $140,000.00. The land would become a part of the Dona Ana County Fairgrounds.

This sale is consistent with the Bureau of Land Management's planning system and is compatible with County plans. The land has been used by Dona Ana County as part of the County Fairgrounds for approximately 15 years under land use permits issued by the Bureau of Land Management.

Normally, lands that are used for recreation purposes such as fairgrounds can be conveyed without monetary consideration under the Recreation and Public Purposes Act. However, the subject lands were acquired under the Bankhead-Jones Act, disallowing conveyance under the Recreation and Public Purposes Act.

The public interest will be served by offering this land for sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the land so patented. Such minerals shall be subject to the right to explore, prospect for, mine and remove under applicable law and such regulations as the Secretary may prescribe (Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719).

3. All the geothermal steam and associated geothermal resources as to land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970 (84 Stat. 1566).

Detailed information concerning this sale is available for review at the Las Cruces District Office, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

Upon publication of this notice in the Federal Register the public land described above will be segregated from the operation of the public land laws and the mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or 270 days from the date of publication, whichever occurs first. The land will not be offered for sale sooner than 60 days after the date of this notice.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Las Cruces District Manager, Bureau of Land Management, 1800 Marquess. Comments should reference serial number NM 64778.

Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional committees and delegations pursuant to Pub. L. 98-146, will be evaluated by the District Manager. The New Mexico State Director, Bureau of Land Management, may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

H. James Fox,

District Manager.

[FR Doc. 86-8696 Filed 4-17-86; 8:45 am]

BILLING CODE 4130-FB-M

National Park Service

Upper Delaware Scenic and Recreational River; Availability of Draft Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a draft environmental impact statement for the Upper Delaware Scenic and Recreational River.

SUMMARY: This notice sets forth the opportunity for written comments on the draft Environmental Impact Statement. Public hearings will be scheduled prior to June 20, 1986 at which time the comment period will close.

Written comments should be submitted to James W. Coleman, Jr., Regional Director, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106 (215/597-7013) and must be received by June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph DiBello, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania.

SUPPLEMENTARY INFORMATION: The draft River Management Plan and the revised Guidelines for Land and Water Use Controls have been prepared pursuant to the National Wild and Scenic Rivers Act of 1968 (Pub. L. 90-542, as amended) and the 1978 special provisions for management of the Upper Delaware defined in section 704 of Pub. L. 96-625. The draft plan and the revised Guidelines were prepared by the Conference of Upper Delaware Townships and the National Park Service, with the advice and participation of the Commonwealth of Pennsylvania, the State of New York, the Delaware River Basin Commission, the Upper Delaware Citizen's Advisory Council, and many other interested parties. Copies of the draft plan and the revised Guidelines are available on request.

The River Management Plan contains detailed maps showing the boundaries of the Upper Delaware Scenic and Recreational River, a program for the management of existing and future land and water uses, an assessment of the impacts of the plan on the revenues and cost of local government, and a program providing for coordinated implementation and administration of the plan. This draft document also includes proposed revisions to the existing Land and Water Use Guidelines for the Upper Delaware (published in 46 FR 45433, September 11, 1981). Additionally, the draft plan incorporates, through its "land management program," a land protection plan for the area, as required by National Park Service rules (48 FR 21121, May 1, 1983).

This draft Environmental Impact Statement (EIS) was prepared by the National Park Service for this draft plan. The EIS will describe in detail the environment of the Upper Delaware and will identify environmental impacts of the proposed plan and alternatives. After the hearings and comment period, the drafts will be revised and finalized. The final River Management Plan and final EIS will then be issued simultaneously to the towns for their views. Both the final plan and EIS will then be submitted to the Secretary of the Interior for consideration and decision, following which the plan will be transmitted to the Governors of New York and Pennsylvania, and to the House Interior and Insular Affairs Committee, and the Senate Committee on Energy and Natural Resources of the Congress. The plan will become effective ninety days after its transmittal to the Congress.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 86-8801 Filed 4-17-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-258)]

Burlington Northern Railroad Co.; Abandonment Between Rosalia and Spring Valley, WA; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company (BN) to abandon its 5.57 miles of railroad between Rosalia (milepost 45.60) and Spring Valley, WA (milepost 40.00). An appropriate certificate [of either the usual abandonment type or one implementing the interim use and rail banking provisions of the National Trails System Act, 16 U.S.C. 1247(d)] will be issued unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase)

to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–8719 Filed 4–17–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30771 (Sub-1)]

Burlington Northern Railroad Co.; Exemption of Joint Project Involving Relocation of a Line

On March 19, 1986, Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad.

BN and Spokane International Railroad Company (SI) operate parallel tracks between Spokane and Carders, WA. In order to eliminate a wasteful duplication of facilities, BN has entered a joint project with SI. BN will: (1) Abandon its line between Spokane (milepost 3.00) and Carders (milepost 10.00); (2) acquire trackage rights over 5.75 miles of SI's line between Spokane (milepost 8.24) and Carders (milepost 2.49); and (3) construct four industrial lead tracks between its lines and SI's line to serve existing shippers.[1]

Joint projects involving relocation of a line of railroad that does not disrupt service to shippers are exempt from 49 U.S.C. 11343. *See*, 49 CFR 1180.2(d)(5). By constructing four industrial lead tracks of approximately 200 feet in length, BN will maintain service to its shippers. Accordingly, the relocation of BN's line meets the criteria of 49 CFR 1180.2(d)(5).

BN and SI filed previously a notice of exemption under 49 CFR 1180.2(d)(7) for the trackage rights phase of the joint project. Finance Docket No. 30771, *Burlington Northern R. Co.—Trackage Rights—Spokane International R. Co.* (not printed), served February 26, 1986. The exemption was subject to the employee protective conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). The trackage rights were effective April 1, 1986. Given this, and since the construction portion of the joint project is outside the Commission's jurisdiction, this notice of exemption need extend only to the abandonment portion of the joint project. Railway Labor Executives' Association and United Transportation Union have expressed their concern about the impact the proposed transaction will have on labor interests. As generally done in exemptions of this type, we will impose the conditions set forth in *Oregon Short Line R. Co—Abandonment—Goshen*, 360 I.C.C. 91 (1971), to satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at anytime. The filing of a petition to revoke will not stay the transaction.

Decided: April 8, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–8720 Filed 4–17–86; 8:45 am]

BILLING CODE 7035-01-M

[1] The construction of these tracks does not fall under the class exemption because BN is constructing spur, industrial or side track outside the Commission's jurisdiction under 49 U.S.C. 10907(b)(1).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Toxic Substances Control Act; United States v. Sugarhouse Realty, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 7, 1986, a proposed Consent Decree in *United States* v. *Sugarhouse Realty, Inc.*, Civil Action No. 85–4829, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed Consent Decree concerns the cleanup of a facility located in Philadelphia which has been contaminated with polychlorinated biphenyls ("PCBs"). The proposed Consent Decree requires the defendant to remove all soil, water and other materials containing levels of PCBs that exceed certain specified levels.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sugarhouse Realty, Inc.*, D.J. Ref. 90–11–2–134.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–8728 Filed 4–17–86; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgment; Burroughs Corp.

Notice is hereby given that Burroughs Corporation, (Burroughs) has filed with the United States District Court for the Eastern District of Michigan, Southern Division, a motion to terminate the Final Judgment entered March 3, 1913 in *United States* v. *Burroughs Adding Machine Company (of Michigan)*, ("Adding Machine Company"), in an action captioned Equity No. 4 and the Department of Justice in a stipulation also filed with the court has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least 70 days after publication of this notice.

The petition in this action filed March 3, 1913 alleged that Adding Machine Company attempted to monopolize and did monopolize the market in mechanical adding and listing machines by its alleged behavior with respect to four other adding machine companies, and by engaging in certain other allegedly unfair marketing practices. The Judgment required Adding Machine

Company to issue certain instructions to its employees to prevent them from unlawfully interfering with competitors in the business of adding machines. The Judgment also enjoined Adding Machine Company from acquiring "any controlling interest in the stock of any company engaged in business in competition with the defendant company" without first applying to the Court and receiving permission to do so.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public interest. Copies of the Complaint and Final Judgment, Burroughs' motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481) and at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, 133 U.S. Courthouse, 231 W. Lafayette, Detroit, Michigan 48226. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within 60 days, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I, Antitrust Division, Department of Justice, Washington, DC 20530 (telephone: 202–633–2541).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–8725 Filed 4–17–86; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Columbia Artists Management Inc. and Community Concerts, Inc.

Notice is hereby given that Columbia Artists Management Inc. ("Columbia") and Community Concerts Inc. ("Community") have filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgment in *United States* v. *Columbia Artists Management Inc. et al.*, Civil Action No. 104–165, and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Final Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on October 20, 1955) alleged that Columbia and Community had combined and conspired with National Concert and Artists Corporation and its subsidiary, Civic Concert Service, Incorporated, to restrain and monopolize trade and commerce in the management and booking of artists and in the formation and maintenance of organized audience associations in violation of sections 1 and 2 of the Sherman Act. The Final Judgment (entered on October 20, 1955) bars defendants from agreeing to allocate or divide territories or markets or otherwise refrain from competing in the organization and maintenance of audience associations, or agreeing to exclude any person from engaging in the organization or maintenance of audience associations. The Final Judgment also imposes a number of additional restraints and affirmative duties upon defendants that are designed to facilitate bookings of independently-managed artists into the audience associations as well as to facilitate bookings of defendants' artists into audience associations controlled by others.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Final Judgment would serve the public interest. Copies of the complaint and Final Judgment, Columbia and Community's papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone: 212–264–0390).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–8495 Filed 4–17–86; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Hughes Tool Co.

Notice is hereby given that Hughes Tool Company ("Hughes") has filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgment ("Judgment") in *United States* v. *Hughes Tool Company*, Civil Action No. 123–124; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The Complaint in this case (filed on August 2, 1957) alleged that defendant Hughes had violated Section 1 of the Sherman Act (15 U.S.C. 1) by conspiring to restrain interstate and foreign commerce in certain oil and gas well drilling equipment, including: drill bits (commonly referred to as "rock bits"), drill pipe, various "tool joints" (metal parts that couple together sections of drill pipe), and "drill collars" (metal parts that couple together drill bits and drill pipe). The Complaint named as a co-conspirator, but not as a defendant, Alfred Wirth & Co., a West German firm.

The Final Judgment enjoins Hughes from further performance or enforcement of any existing agreements or from entering into any new agreements with any foreign firms which:

(a) Restrict the manufacture, sale, distribution, or use of drilling equipment designed or produced by any person other than Hughes;

(b) Restrict imports into or exports from the United States of drilling equipment;

(c) Divide territories for the manufacture, sale, or distribution of drilling equipment;

(d) Fix prices, terms, or conditions for the sale, lease, or distribution of drilling equipment by a foreign firm to third persons, except that Hughes may prescribe minimum prices to be charged by a foreign firm for the sale or lease of drilling equipment in a foreign country where the equipment is produced pursuant to a Hughes license, bears the

Hughes trademark, or is substantially identical to products made by Hughes, and where the fixing of such prices will not result in the lessening of exports of such equipment to the United States;

(e) Require a foreign licensee under Hughes' trademarks, patents, or know-how relating to drilling equipment to grant back to Hughes exclusive rights under any patents of the licensee relating to such equipment, except that Hughes may obtain an exclusive grant-back under United States improvement patents provided the licensee retains the right to use and sell under the improvement patents;

(f) Require the sale, lease, or distribution of drilling equipment only through representatives or agents approved by Hughes or only through joint agents;

(g) Require the sale, lease, or distribution of any drilling equipment under the Hughes name or trademark;

(h) Require disclosure of names and addresses of customers, purchasers, or users of drilling equipment;

(i) Require the return to Hughes upon termination of the agreement of know-how supplied by Hughes; or

(j) Require payment to Hughes of commissions on sales of drilling equipment sold by the foreign firm unless Hughes is in part instrumental in the sale being made.

The Final Judgment also enjoins Hughes from:

(a) Using any Hughes trademark to prevent any foreign firm from importing to the United States drilling equipment lawfully bearing that trademark;

(b) Using any patent to prevent any foreign firm from importing into the United States drilling equipment manufactured under a patent license from Hughes; or

(c) Asserting any rights to secret information or know-how to prevent any foreign firm from importing to the United States drilling equipment manufactured by use of the secret information and know-how obtained by license from Hughes, provided that Hughes may charge reasonable royalties for the use of such information.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public's interest. Copies of the Complaint, Final Judgment, Hughes' motion papers, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7233, United States Department of Justice, Tenth Street and Pennsylvania Avenue, NW, Washington, DC., 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received within sixty (60) days and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, Washington, DC, 20530 (Telephone: (202) 724–7974).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–8724 Filed 4–17–85; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Thomas D. Burleigh, Jr., M.D.; Revocation of Registration

On February 13, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Thomas D. Burleigh, Jr., M.D., 3150 Lakeside Drive, #301, Grand Junction, Colorado 81501. The Order to Show Cause sought to revoke Dr. Burleigh's DEA Certificate of Registration AB0838827. The statutory predicate for the Order to Show Cause was the felony conviction of Dr. Burleigh in the District Court, Mesa County, Colorado, of unlawful dispensing of a Schedule II controlled substance not in the course of professional practice.

A registered mail receipt indicates that the Order to Show Cause was received by Dr. Burleigh on February 27, 1986. There has been no response to the Order to Show Cause. Therefore, the Administration finds that Dr. Burleigh waived his opportunity for a hearing on the issue raised by the Order to Show Cause and pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order on the record as it appears.

Under Title 21 U.S.C. 824(a)(2), the Administrator may revoke a registration upon a finding that the registrant has been convicted of a felony relating to controlled substances under state or Federal law. The Administrator finds that Dr. Burleigh was convicted, after entering a guilty plea, on August 19, 1985 in the District Court, Mesa County, Colorado of unlawful dispensing of a Schedule II controlled substance not in the course of professional practice. Dr. Burleigh's felony conviction resulted from an investigation conducted by the Grand Junction Police Department in January, 1985, which revealed that Dr. Burleigh was selling tablets of Dilaudid (a Schedule II controlled substance) to individuals for no medical purpose. The doctor himself claimed that he had not treated any patients since he retired from his medical practice in August 1983. One individual to whom Dr. Burleigh sold the Dilaudid tablets told police officers that she paid the doctor forty dollars apiece for Dilaudid 4 mg. tablets, and that he knew she sold them for a profit. Dr. Burleigh was charged in a six count information with unlawful dispensing of a Schedule II controlled substance, conspiracy to illegally dispense Schedule II controlled substances, illegal possession with intent to dispense Schedule II controlled substances, and failure to keep required records and properly label controlled substances.

Based upon his felony conviction relating to controlled substances, the Administrator concludes that there is a lawful basis for revoking Dr. Burleigh's DEA Certificate of Registration. The Administrator further finds that Dr. Burleigh's actions relating to the illegal dispensing of a potent Schedule II narcotic, which he knew would be used for a non-medical purpose, warrant the revocation of his DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration AB0838827 issued to Thomas D. Burleigh, Jr., M.D. be revoked.

This order is effective May 19, 1986.

Dated: April 14, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–8679 Filed 4–17–86; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list as published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submssion they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Case Study Review of Employer Recordkeeping Practices and Procedures Under the Occupational Safety and Health Act of 1970
Other, one time
Businesses or other for profit
40 responses; 40 hours; 1 form

The Annual Survey of Occupational Injuries and Illnesses provides workplace safety and health data required for effective administration of the Occupational Safety and Health Act of 1970 and for monitoring the safety and health status of workers. Reliable and valid data are essential to these purposes. Data quality depends on quality recordkeeping which is the basis of employer reporting of injuries, illnesses, and fatalities in the annual survey.

Extension

Bureau of Labor Statistics
Employment, Wages, and Contributions Report (ES–202 Program)
1220–0012; BLS 3031
Quarterly
State or local govenments
212 responses; 2,500 hours per response; No forms are used—data are submitted on magnetic tape

The Employment, Wages, and Contributions Report is a summary of employment, wage, and contributions data collected by State employment security agencies from employers subject to State unemployment insurance (UI) and Unemployment for Federal Employees (UCFE) laws. The data are used by Federal and State governments in the administration of unemployment programs, by the Bureau of Labor Statistics and Bureau of Economic Analysis for statistical purposes, by Federal agencies for administrative and research purposes, and by public and private researchers.

Occupational Safety and Health Administration
Respiratory Protection
1218–0099; OSHA 274
Recordkeeping; labeling
Businesses or other for profit; Federal agencies or employees; small businesses or organizations
160,507 respondents; 1,181,764 hours, 0 forms

Information is to be collected by employers to assure that employees who must wear respiratory protection devices are properly protected and issued the type of devices appropriate to the hazard.

Signed at Washington, DC, this 15th day of April 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–8789 Filed 4–17–86; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that

section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Waer and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

	Decisions	Page Nos.
Volume III		
Washington	WA86-8	365a-365d

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

	Decisions	Page Nos.
Volume I		
District of Columbia	DC86-1 (Jan. 3, 1986).	82
Georgia	GA86-3 (Jan. 3, 1986).	213, 213a-213b
Maryland	MD86-1 (Jan. 3, 1986).	384-386
New York	NY86-4 (Jan. 3, 1986).	669
New York	NY86-6 (Jan. 3, 1986).	684
New York	NY86-10 (Jan. 3, 1986).	726
West Virginia	WV86-2 (Jan. 3, 1986).	1116-1118, 1125
West Virginia	WV86-3 (Jan. 3, 1986).	1139-1140, 1142
Volume II		
Indiana	IN86-6 (Jan. 3, 1986).	286-288
Iowa	IA86-3 (Jan. 3, 1986).	35
Michigan	MI86-17 (Jan. 3, 1986).	486
Missouri	MO86-2 (Jan. 3, 1986).	561-567
Nebraska	NE86-1 (Jan. 3, 1986).	618
Ohio	ON86-1 (Jan. 3, 1986).	662-664, 666-674
Ohio	OH86-2 (Jan. 3, 1986).	677-678, 680, 685
Ohio	OH86-3 (Jan. 3, 1986).	698
Ohio	OH86-28 (Jan. 3, 1986).	753
Ohio	OH86-29 (Jan. 3, 1986).	757-762, 764-766, 768, 770-795
Listing by location (index).		xxiv
Volume III		
California	CA86-1 (Jan. 3, 1986).	35-38
Nevada	NV 86-2 (Jan. 3, 1986).	236
Washington	WA86-5 (Jan. 3, 1986).	356
Listing by decision (index).		xxviii

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 11th day of April 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-8448 Filed 4-17-86; 8:45 am]

BILLING CODE 4510-27-M

Office of the Assistant Secretary for Veterans' Employment and Training

Special Solicitation for Grant Application Job Training Partnership Act, Title IV, Part C, Program Year 1986

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth the procedures and schedule for the special Solicitation for Grant Application (SGA) for the operation of veterans' employment and training programs in the State of Oklahoma and in the Commonwealth of Puerto Rico in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA). The regulations at 20 Code of Federal Regulations (CFR) Part 635 provide guidance for the development and administration of programs authorized under this part.

DATE: The SGA will be availabe for issuances of April 18, 1986. The closing date for receipt of grant applications in response to the SGA is June 5, 1986.

ADDRESS: A copy of the SGA may be obtained by written request only, including two self-addressed mailing labels, to the State Director for Veterans' Employment and Training Service (SDVETS) located in the State in which the proposed program would operate. The applicable addresses are as follows:

Oklahoma

SDVETS James D. Howard, Veterans' Employment and Training Service, U.S. Department of Labor, Will Rogers Memorial Office Building, Room 301, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3738

Puerto Rico

SDVETS Rafael Pujals, Veterans' Employment and Training Service,

U.S. Department of Labor, P.O. 14337, Bo Obrero Station, Santurce, Puerto Rico 009126, Telephone: (809) 754–5391

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Juarez, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor (USDOL), 200 Constitution Ave. NW., Rm. S1316, Washington, DC 20210, Telephone (202) 523–9110, or the appropriate State Director for Veterans' Employment and Training Service.

SUPPLEMENTARY INFORMATION: On January 2, 1986, the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, issued an SGA for the Job Training Partnershiup Act Title IV, Part C, Program Year 1986 funds. This part provides for programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. Notice of the issuance was published in the **Federal Register** on December 13, 1985. A deadline of February 14, 1986 was established for receipt of applications from eligible applicants. Eligible applicants were defined as: (1) The designated JTPA administrative entity for the State/Governor as recognized by the Employment and Training Administration, USDOL, and (2) service delivery area administrative entities as described in Sections 101 and 103 of the JTPA, including single statewide service delivery areas.

No acceptable application was received from an eligible applicant within the State of Oklahoma and the Commonwealth of Puerto Rico. Accordingly, the Assistant Secretary for Veterans' Employment and Training announces the availability of funds to implement programs in each of these States in the following amounts:

State	Amount available
Oklahoma	$116,000
Puerto Rico	55,000

In accordance with the SGA, applications for funds in these two jurisdictions will now be accepted from public agencies; community-based organizations; units of local and State government; Indian tribes, bands, or groups on Federal or State reservations; Alaskan Native entities; educational institutions; and private for profit and nonprofit organizations.

Each applicant, as of the date of this notice and at the time of application, must be geographically located in the State in which the proposed program would be implemented. Further, each applicant must demonstrate that it possesses the requisite understanding and capabilities to conduct an effective program for targeted veterans.

Applications for funds must be received by the appropriate State Director for Veterans' Employment and Training Service (SDVETS) not later than 4:30 p.m., at the SDVETS' address noted above on June 5, 1986.

It is anticipated that grant awards will be made by December 1986.

Consultation and technical assistance relative to the developemnt of an application under the SGA is available upon request from the appropriate State Director for Veterans' Employment and Training Service.

Signed at Washington, DC, this 15th day of April, 1986.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 86–8790 Filed 4–17–86; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86–29]

Intent To Grant Partially Exclusive Patent Licenses; Power Controls International Pty., Ltd., et al.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Partially Exclusive Patent Licenses.

SUMMARY: NASA hereby gives notice of intent to grant to Power Controls International Pty., Limited of Sydney, Australia and Daishin Trading Company Limited of Tokyo, Japan, limited partially exclusive, revocable licenses to practice the invention described in the foreign counterparts of U.S. Patent Application No. 746,160 for "Segmented Tubular Cushion Springs and Spring Assembly". These licenses would extend to Australia, Japan, South Korea, Hong Kong, Singapore, Taiwan, and the Peoples Republic of China. The proposed partially exclusive licenses will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the partially exclusive licenses unless, within 60 days of the date of the Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel for Intellectual Property Law whether to grant the partially exclusive licenses.

DATE: Comments to this notice must be received by June 17, 1986.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: April 11, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86–8680 Filed 4–17–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Section) to the National Council on the Arts will be held on May 7–9, 1986 from 9:00 a.m. to 6:00 p.m., Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 9, 1986, from 1:30 p.m. to 3:30 p.m., to discuss Policy and guidelines.

The remaining sessions of this meeting on May 7–8, 1986 from 9:00 a.m. to 6:00 p.m., May 9, 1986 from 9:00 a.m. to 1:30 p.m. and May 9, 1986 from 3:30 p.m. to 6 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (C)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

April 11, 1986.

[FR Doc. 86–8729 Filed 4–17–86; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Challenge Section) to the National Council on the Arts will be held on May 12, 1986 from 9:00 a.m. to 5:30 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of Feburary 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations.

April 11, 1986.

[FR Doc. 86–8731 Filed 4–17–86; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Sculpture Fellowships Section) to the National Council on the Arts will be held on May 12–15, 1986 from 9:00 a.m. to 8:00 p.m., and May 16, 1986, 9:00–6:00 p.m., Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations.

April 11, 1986.

[FR Doc. 86–8730 Filed 4–17–86; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Regulatory Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Regulatory Biology.

Date and Time: May 7, 8, and 9, 1986 8:30 a.m. to 6:00 p.m.

Place: Room 1243, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lewis Greenwald, Program Director, Regulatory Biology Program, Room 332, National Science Foundation, Washington, DC 20550 Telephone 202/357–7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 14, 1985.

[FR Doc. 86–8701 Filed 4–17–86; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date And Time:

May 8, 1986; 9:00 a.m. to 6:00 p.m. (Open)
May 9, 1986; 9:00 a.m. to Noon (Open)
May 9, 1986; 1:00 a.m. to 3:00 p.m. (Closed)
May 9, 1986; 3:00 a.m. to 5:00 p.m. (Open)

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Part Open.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, D.C. 20550; Telephone (202) 357–7985.

Summary of Minutes: May be obtained from Mrs. Phyllis Hurley, Division of Physics, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda:

May 8, 1986, 9:00 a.m.–6:00 p.m. (Open)
Discussion of funding issues in Physics.
May 9, 1986, 9:00 a.m.–Noon (Open)
Oversight review of NSF support of Gravitational physics, including presentations by NSF staff and the report of the Subcommittee for Review of the NSF Gravitational Physics Program.
May 9, 1986, 1:00 p.m.–3:00 p.m. (Closed)
Oversight review of Gravitational Physics Program.
May 9, 1986, 3:00 p.m.–5:00 p.m. (Open)
Continuation of morning and previous day's discussions.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee

Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 14 1986.

[FR Doc. 86–8702 Filed 4–17–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Advanced Scientific Computing.

Dates and Times:

May 22—8:00 A.M.–5:00 P.M.
May 23–8:00 A.M.–3:00 P.M.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting:

Open

May 22—8:00 A.M.–4:00 P.M.
May 23—8:00 A.M.–3:00 P.M.

Closed

May 22—4:00 P.M.–5:00 P.M.

Contact Person: Dr. John W.D. Connolly, National Science Foundation, Washington, DC 20550, Phone: 202/357–7558.

Summary of Minutes: May be obtained from John W.D. Connolly

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda: The open session will be focused on planning and policy issues. These will include a review of recent actions and budget priorities. The closed session will discuss pending proposals.

Reason for Closing: The closed session of the meeting will deal with a discussion of proposals containing the names of applicant institutions and principal investigators and privileged institutions and privileged information from the files pertaining to the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director of NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 14, 1986.

[FR Doc. 86–8703 Filed 4–17–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for the Biophysics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: Monday, Tuesday, and Wednesday, May 5, 6, and 7, 1986, from 8:00 AM to 6:00 PM.

Place: Room 540, The National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact: Dr. Patricia Jost, Program Director, Biophysics Program, Room 325, Phone: (202) 357–7777 or 7778.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

April 14, 1986.

[FR Doc. 86–8705 Filed 4–17–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Prokaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Prokaryotic Genetics.

Date and Time: Wednesday, May 7—Friday, May 9, 1986, 8:30 AM–5:00 PM.

Place: National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550; Room 1242.

Type of Meeting: Closed.

Contact Person: Dr. Philip D. Harriman, Program Director, Prokaryotic Genetics; (202) 357–9687.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

April 14, 1986.

[FR Doc. 86–8704 Filed 4–17–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on May 7, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 7, 1986—1:00 P.M. until the conclusion of business

The Subcommittee will review the NRC Staff's proposed resolution of USI A–17, "Systems Interactions in Nuclear Power Plants."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telepone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 14, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-8781 Filed 4-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-241]

Mississippi State University; Order Terminating Provisional Construction Permit

By application dated February 6, 1978, as supplemented, the Mississippi State University (the licensee) requested the termination of Provisional Construction Permit No. CPRR-91 for the component parts of the 100 watt homogeneous research reactor possessed by the Mississippi State University and stored on its campus at Mississippi State, Mississippi. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Termination of Provisional Construction Permit" was published in the **Federal Register** on March 6, 1979 at 44 FR 12304. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. Subsequently, an "Order Authorizing Disposition of Component Parts" was published in the **Federal Register** on April 4, 1979 at 44 FR 20323.

The Commission has found that satisfactory disposition has been made of the component parts in accordance with the Order and the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security or to the health and safety of the public.

The facility area has been inspected by the Commission's Region II inspectors and radiation surveys confirm that there is no residual radiation above normal background and the area is available for unrestricted access.

Therefore, pursuant to the application by the Mississippi State University, Provisional Construction Permit No. CPRR-91 is hereby terminated as of the date of this Order.

For further details with respect to this action, see: (1) Application for authorization to terminate facility license dated February 6, 1978, as supplemented, (2) the Commission's Order Authorizing Disposition of Component Parts, and (3) the Commission's related Safety Evaluation. Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 8th day of April 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B.

[FR Doc. 86-8780 Filed 4-17-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15049; 812-6305]

Mutual Benefit Funding, Inc.; Application

April 11, 1986.

Notice is hereby given that Mutual Benefit Funding, Inc. ("Applicant"), 520 Broad Street, Newark, New Jersey 07101, filed an application on February 18, 1986, and an amendment thereto on April 2, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

Applicant states it was organized in 1984 as a wholly-owned subsidiary of MBL Holding Corporation ("Holding") which in turn is a wholly-owned subsidiary of The Mutual Benefit Life Insurance Company ("MBL"). According to the application, MBL, a New Jersey mutual life insurance company founded in 1845, issues a wide variety of individual and group life insurance policies directly and through its wholly-owned stock life insurance subsidiary; other subsidiaries offer insurance and investment products and provide investment advisory services to individuals, institutions and group pension plans. Applicant also states that it will not issue voting securities to any person other than Holding.

Applicant represents that its principal business will be to borrow money in the United States commercial paper and debt markets and loan the proceeds thereof to MBL and its direct and indirect subsidiaries. Applicant also represents that all loans by it to MBL and its subsidiaries will bear interest equal to that which Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Further, Applicant states that the amounts and maturity of these loans will allow Applicant to make timely payments of principal and interest on its borrowings.

According to the application, before Applicant engages in any borrowings, MBL and Applicant will enter into a support agreement ("Agreement") providing that:

(i) MBL shall continue to own, directly or indirectly all the outstanding voting stock of Applicant and shall not pledge, encumber or dispose of that stock;

(ii) MBL will cause Applicant to have at all times a tangible net worth of at least $1.00;

(iii) The Agreement is made for the benefit of the holders of all of Applicant's debt instruments (other than subordinated debt held by MBL and its subsidiaries) and the holders of all debt instruments guaranteed by Applicant (collectively, "Holders");

(iv) Applicant, for the benefit of the Holders, will timely take all action under the Agreement to require MBL to perform its obligations thereunder;

(v) Each Holder has a direct and immediate right of action against MBL to enforce MBL's obligations under the Agreement should Applicant fail to do so;

(vi) The Agreement may be modified or amended only in ways not less favorable to Applicant or its creditors, but may be terminated by either MBL or Applicant provided that MBL's obligation to maintain at all times the tangible net worth of Applicant at $1.00 will remain in full force and effect until the retirement of all outstanding debt of,

and all outstanding debt guaranteed by, Applicant; and

(vii) Applicant and MBL agree that, if and to the extent that Applicant shall fail to meet its obligations under the Agreement, any creditor shall have a direct and immediate right of action against MBL to enforce those obligations. Although, according to the application, MBL believes that it will never be required to carry out its undertakings under the Agreement, the Agreement provides assurance that Applicant will always have sufficient funds to pay principal and interest on its indebtedness.

Applicant states that its offerings of debt instruments ("Notes") will have maturities of no longer than nine months from the date of issuance and will not contain any provisions for automatic extension, renewal or "rollover." None of the Notes will be payable on demand. The Notes will be issued and sold in denominations of not less than $100,000. They will be offered to financial institutions, corporations and other usual purchasers of commercial paper. The Notes will not be advertised for sale or otherwise offered to the general public.

Applicant states that its Notes will be offered and sold in transactions exempt from registration under the Securities Act of 1933 ("1933 Act"). Applicant represents that it will provide each offeree with disclosure materials which will include a description of the business of MBL and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, these materials will be updated at the time thereof to reflect material changes in the financial condition of MBL and its subsidiaries. Further, prior to any issuance and sale of Applicant's debt securities, Applicant represents that such securities shall have received one of the two highest investment grade ratings from at least one nationally recognized rating organization.

Applicant asserts that it was organized solely to provide funds to MBL and its subsidiaries, and that it will not engage in a general program of investment. Applicant also asserts that by virtue of the Agreement, the Holders will have access to the credit of MBL. Accordingly, Applicant argues that the Act was not intended to regulate companies such as itself and submits that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 6, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-8785 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8202]

Issuer Delisting; Application To Withdraw From Listing and Registration; Pacific Stock Exchange, Inc. (Standard-Bred Pacer and Trotters Inc.)

April 11, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the common stock ($.01 Par Value) of STANDARD-BRED PACER AND TROTTERS INCORPORATED ("Company") from listing and registration on the Pacific Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's securities are not, and have not been, actively traded on the Pacific Stock Exchange.

Any interested person may, on or before May 2, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-8786 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

April 11, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Gulf Canada Corporation
Common Shares, No Par Value (File No. 7-8909)

Gulf Canada Corporation
Series 1 Preference Shares, No Par Value (File No. 7-8910)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 2, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-8784 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23123; File Nos. 4-281, S7-433]

Joint Industry Plan; Filing and Immediate Effectiveness of Amendments to the Consolidated Quotation Plan and Consolidated Tape Association Plan Relating to Consolidated Subscriber Form

The participants in the Consolidated Quotation Plan ("CQ Plan") and Consolidated Tape Association ("CTA") on March 12, 1986 submitted amendments [1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 under Securities Exchange Act of 1934" ("CTA Plan").[2]

I. Description of the Amendments

The purpose of the amendments is to adopt a new, consolidated form for use by professional subscribers to Network B of the CQ and CTA Plans. Section VIII of the CQ Plan and Section VII of the CTA Plan currently require every "professional" subscriber who receives quotation information or last sale prices relating to Network B Eligible Securities to, among other things, execute a form of agreement with the American Stock Exchange (acting on behalf of the Network B Participants) substantially in the form of Exhibit E to the CQ Plan or Exhibit C to the CTA Plan ("Network B Form"). The Consolidated Form consolidates the Network B Form and several other subscriber agreements and addenda thereto.

The Commission believes that the amendments represent a positive enhancement to the administration of the CQ and CTA Plans that creates opportunities for more efficient and effective market operations.[3] In light of this conclusion, and because the CQ and CTA Plan participants have stated in their filings that the amendments involve solely technical and ministerial matters relating to subscriber forms, the amendments have become effective pursuant to paragraph (C)(3)(iii) of Rule 11Aa3–2.

II. Request for Comment

Although the amendments were effective upon filing with the Commission, the Commission may summarily abrogate the amendments within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act.

In order to assist the Commission in determining whether to abrogate the amendments and to require refiling and further review, interested persons are invited to submit their views to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, within 21 days from the date of publication of this notice in the **Federal Register**. The Amendments to the CQ and CTA Plans will be available for public inspection in the Commission's public reference room. All communications should refer to File Nos. 4–281 or S7–423.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: April 14, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–8783 Filed 4–17–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-23122; SR-MSRB-86-7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board, 1818 N Street, NW., Washington, DC 20036 on March 17, 1986, submitted copies of a proposed interpretation of a rule (hereafter sometimes referred to as the "proposed rule change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The interpretation of Board rule G–17, on fair dealing, states that the Board recognizes that pending legislation that would amend the Internal Revenue Code has created uncertainty as to whether interest paid on certain municipal securities issues could be deemed subject to federal income taxation, and, if so, whether any such issues would be deemed taxable retroactive to their date of issuance. The Board views the uncertain federal tax status as material to an investor's investment decision about municipal securities, and hence, the interpretation provides that this uncertain status must be disclosed to customers at or before execution of a transaction in such securities.

In regard to the confirmation disclosure requirements of Board Rule G–15(a), the Board recognizes that a dealer is not required to disclose on a customer confirmation the existence of a legal opinion concerning uncertain tax status. Hence, the proposed rule change states that a dealer has the discretion to include information as to such uncertain tax status on a customer confirmation.

This proposed rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. SR–MSRB–86–7.

Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and any subsequent amendments also will be available at the office of the MSRB.

For the Commission, by the Division of Market Regulation pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

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[1] The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan also was submitted pursuant to Rule 11Aa3–1 under the Act.

[2] The CQ Plan and subsequent amendments are contained in File No. 4–281. The Commission approved the CQ Plan in Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521. The CTA Plan and subsequent amendments are contained in File No. S7–433. The Commission approved the CTA Plan in Securities Exchange Act Release No. 16983 (July 16, 1983), 45 FR 49414.

[3] *See*, section 11A(a)(1)(B) of the Act.

[4] 17 CFR 200.30–3(a)(27).

Dated: April 14, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-8776 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23120/April 11, 1986, File No. SR-NASD-86-3]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 20, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder to delete Part VIII, Schedule C of its By-Laws. The rule change eliminates the exemption from examination that had been available to persons seeking registration with the NASD who were formerly associated with broker-dealers registered under the SECO program. A precondition of the exemption was that the applicant's association with the SECO broker-dealer had not been terminated for two years or more prior to the NASD's receipt of the application for registration. Because the SECO program was abolished more than two years ago, that exemption is no longer available.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22974, March 6, 1986) and by publication in the Federal Register (51 FR 8609, March 12, 1986). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular the requirements of Section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

John Wheeler,

Secretary.

[FR Doc. 86-8777 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23104; File No. SR-NYSE-86-12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 24, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to revise the list of Exchange rule violations and fines applicable thereto pursuant to Rule 476A, "Imposition of Fines for Minor Violation(s) of Rules" (the "Rule 476A Violations List") by adding to the list the failure to transfer a customer securities account in accordance with the requirements of Rule 412, "Customer Securities Account Transfers," and the interpretations thereunder.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 476A provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of certain specified rules that the Exchange determines is major in nature. The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when the initiation of a full disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for such an appropriate response to minor violations of certain Exchange rules while, through its specified required procedures, preserving the due process rights of the accused. The Rule 476A Violations List specifies those rule violations that may be the subject of fines under the rule and also specifies the amount of such fines.

The purpose of this proposed rule change is to add the failure to transfer a customer securities account in accordance with the requirements of Rule 412 and the interpretations thereunder to the Rule 476A Violations List. Rule 412 and its interpretations, which became effective February 24, 1986, are intended to provide means of facilitating and ensuring prompt and efficient transfers of customer securities accounts between member organizations. In general, the rule and its interpretations require that when a customer requests a transfer of his or her entire account from one member organization to another, that account transfer must occur within ten business days.

To assist the Exchange in enforcing Rule 412, the rule specifically provides the Exchange with the discretionary authority to impose a late fee of up to $100 per securities account for each day a member organization fails to adhere to the time frames or procedures required by the rule and its interpretations. This late fee provision is intended to be utilized when patterns of dilatoriness in transfers of accounts are detected involving a particular member organization. Since, however, the new account transfer requirements are being phased in to apply only to a certain maximum number of account transfers initiated by a member organization in a single day (see letter from Donald van Weezel, Managing Director for Regulatory Affairs, New York Stock Exchange, Inc., to Richard Chase, Associate Director of the Division of Market Regulation, Securities and Exchange Commission, dated February 12, 1986), and since those requirements have only been effective a short time, the Exchange is currently unable to satisfactorily determine the appropriate compliance standards to apply to member organizations in connection with patterns of delay in account transfers. The proposed rule change,

however, would provide for interim sanctions by the Exchange for violations of Rule 412 or its interpretations, and, at the same time, provide the Exchange with needed flexibility in monitoring compliance and imposing variable sanctions.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") in that it is designed to protect investors and the public interest by requiring expeditious transfers of customer securities accounts. The proposed rule change also is consistent with the finding of Congress, as expressed in section 17A(a)(1)(A) of the Act, that "[t]he prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors."

In addition, the proposed rule change will advance the objectives of section 6(b)(6) of the Act in that it will permit member organizations to be "appropriately disciplined" for violations of Rule 412 or its interpretations in those instances when a violation is minor in nature but a sanction more serious than a warning or cautionary letter is appropriate, while providing a fair procedure for imposing such a sanction, in accordance with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change does not impose any burden on competion that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act. Rule 412 became effective on February 24, 1986. The Exchange believes that the application of minor rule violation procedures to Rule 412 is necessary to encourage compliance with account transfer requirements. Consequently, the Exchange requests accelerated effectiveness to ensure timely availability of the enforcement mechanism.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national secrities exchange, and in particular, the requirements of Sections 6 and 17A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the proposal in that Rule 412 serves an important function in the protection of investors by requiring prompt transfers of customer securities accounts. Assuming that the Exchange is correct when it states that a schedule of penalties is necessary for effective implementation of the rules, and since that schedule is already in effect, it would be a benefit to the investing public to grant accelerated effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [date 21 days from date of publication].

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

Dated: April 11, 1986.

Exhibit 1A—List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A

Additional italicized.

- Rule 15(c) requirement to issue ITS pre-opening notifications
- Rule 15A requirement to comply with ITS block-trade policy
- Rule 79A.30 requirement to obtain Floor Official approval for trades at wide variations from last sale
- Rule 123A.40 requirement to obtain Floor Official approval for election of stop orders
- Rule 104.12 Specialist investment account rule violations
- Rule 112(d) Competitive Trader stabilization requirement violations
- Record retention rule violations (Rules 117, 121, 123, 123A.20, 410)
- Reporting rule violations (Rules 97.40, 104A.50, 107.30, 112A.10)
- Violations of Exchange policies regarding procedures to be followed in delayed opening situations
- Rule 134(c) and (e) requirement to comply with specified QT procedures and time periods
- Rule 440B short sale rule violations
- Rule 107.10 RCMM stabilization requirement violations
- Requirement to participate in the pilot program to test revisions to the Specialist Performance Evaluation Questionnaire ("SPEQ") and its associated processes by completing and returning "screening" and "SPEQ" questionnaires within specified time periods
- Failure to collect and/or submit all audit trail data specified in Rule 132
- *Failure to transfer a customer securities account in accordance with the requirements of Rule 412 and the interpretations thereunder*

Fine amount	Individual	Member organization
First time fined	$500	$1,000
Second time fined*	$1,000	$2,500
Subsequent fined*	$2,500	$5,000

*Within a "rolling" 12-month period.

[FR Doc. 86-8782 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23124; File Nos. SR-SCCP-86-01 and SR-Philadep-86-02]

Self-Regulatory Organizations; Stock Clearing Corp. of Philadelphia ("SCCP") and Philadelphia Depository Trust Co. ("Philadep"); Order Withdrawing Proposed Rule Changes

On January 27, 1986, SCCP and Philadep filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), proposed rule changes that would penalize participants for failing to confirm promptly the accuracy of SCCP/Philadep-generated monthly account statements.

Notice of the proposed rule changes was published in Securities Exchange Act Release Nos. 22873 and 22874 (51 FR 5629, February 14, 1986, and 51 FR 5630, February 14, 1986). No letters of comment were received by the Commission.

By letter dated February 27, 1986, SCCP and Philadep requested that the proposals be withdrawn. SCCP and Philadep have decided on alternative proposals which will be submitted to the Commission following Board approval. In response to this request, the Commission grants the withdrawal of the proposed rule changes.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes be, and hereby are, withdrawn.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 14, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-8778 Filed 4-17-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IX, located in the geographical area of Fresno, California, will hold a public meeting at 9:00 a.m. on May 8, 1986, at the Fresno District Office, 2202 Monterey Street, Suite 108, Fresno, California to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Peter J. Bergin, District Director, U.S. Small Business Administration, 2202 Monterey Street, Suite 108, Fresno, California, 93721, (209) 487-5791.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 10, 1986.

[FR Doc. 86-8688 Filed 4-17-86; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The Small Business Administration, Region X Advisory Council, located in the geographical area of Boise, Idaho, will hold a public meeting at 10:00 a.m., Tuesday, April 29, 1986, at the Owyhee Plaza "Regency Room", 1109 Main Street, Boise, Idaho, to discuss such business as may be presented by members, the staff of U.S. Small Business Administration, and others attending.

For further information, write or call Joseph G. Kaeppner, District Director, U.S. Small Business Administration, 1020 Main Street, Suite 290, Boise, Idaho—(208) 334-1096.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 10, 1986.

[FR Doc. 86-8690 Filed 4-17-86; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration, Region IX, located in the geographical area of San Diego, California, will hold a public meeting at 9:00 a.m. on May 2, 1986, in the Federal Building, 880 Front Street, San Diego, California, 92188, Room 2-S-14, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call George. P. Chandler, Jr. District Director, U.S. Small Business Administration, 880 Front Street, Room 4-S-29, San Diego, California, 92188, (619) 293-7252.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 10, 1986.

[FR Doc. 86-8689 Filed 4-17-86; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Tuesday, April 29, 1986, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071. Telephone No. (213) 894-2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 10, 1986.

[FR Doc. 86-8691 Filed 4-17-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Shipping Coordinating Committee; Three Meetings; Subcommittee on Safety of Life at Sea Working Group on Stability, Load Lines, and on Safety of Fishing Vessels

The Working Group on Stability, Load Lines and on Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 8, 1986 at 10:00 AM in room 1303 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to discuss the advance papers received and the U.S. position for Session 31 scheduled for June 2-6, 1986. Items of principal interest on the agenda for this session are:

—Subdivision of Dry Cargo Ships
—Intact Stability
—Residual Stability for Passenger Ships
—Double Bottoms in ships other than Tankers
—Tredoment of Wells on Mobile Drilling Units
—Review of Stability for Mobile Drilling Units
—Information for the Master
—Future Revision of the Load Line Convention

For further information contact Mr. W.A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MTH-5), 2100 Second Street, SW., Washington, DC 20593, Telephone: (202)426-2187 or 2188.

Working Group on Radio Communications

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct an open meeting on May 8,

1986 at 9:30 AM in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to prepare U.S. Positions for the 32nd Session of the Subcommittee on Radiocommunications of the International Maritime Organization to be held in London, December 1–5, 1986. In particular the working group will discuss the following topics:

—Maritime Distress System
—Digital Selection Calling
—Satellite Emergency Position Indicating Radio Beacons (EPIRBs)
—Preparations for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for Mobile Telecommunications
—Preparations for the International Radio Consultative Committee (CCIR) Study Group 8.

For further information contact Mr. Richard Swanson, U.S. Coast Guard Headquarters (G–TPP–3/64), 2100 Second Street, SW., Washington, DC 20593, Telephone: (202)426–1231.

National Committee for the Prevention of Marine Pollution

The National Committee for the Prevention of Marine Pollution (NCPMP) will conduct a special meeting on July 2, 1986 at 1:30 PM in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this special meeting will be to ascertain the desirability of U.S. ratification of Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating thereto (MARPOL 73/78). Previous U.S. positions on Annex V, the potential for U.S. ratiification, and its eventual entry into force internationally will be discussed.

Annex V Requirements: Specifically, Annex V Regulations would apply to *all* ships and would prohibit:

(1) Disposal into the sea of all plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags. The accidental loss of synthetic fishing nets is exempted providing that all reasonable efforts have been taken to prevent such loss.

(2) Disposal of dunnage, lining, and packing materials which will float, within 25 nautical miles from the nearest land.

(3) Disposal of food wastes, glass, rags, paper, metal, bottles, crockery, and similar refuse within 12 nautical miles from the nearest land.

Annex V would also require adequate facilities at ports and terminals for reception of garbage from ships.

Members of the public may attend each of these meetings up to the seating capacity of the rooms.

For further information or for documentation pertaining to the NCPMP meeting, contact either Lieutenant Commander D.B. Pascoe or Lieutenant G.T. Jones, U.S. Coast Guard Headquarters (G–WER–3), 2100 Second Street, SW., Washington, DC 20593, Telephone: (202) 426–9573.

Dated: April 11, 1986.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86–8694 Filed 4–17–86; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application for an All-Cargo Air Service Certificate

In accordance with Part 291 (14 CFR 291), notice is hereby given that the Department of Transportation has received an application, Docket 43735, from Milam International, Inc. d/h/a PremAir, 12830 East Control Tower Road, Englewood, Colorado, 80112, for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested person may file an answer to this application within twenty-one days (21) after publication of this notice in the **Federal Register.** An executed original and six copies of such answer shall be addressed to Docket 43735, Documentary Services Division, Room 4107, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Federal Aviation Act or the Department's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Dated: April 15, 1986.

Paul L. Gretch,

Director, Office of Aviation Operations.

[FR Doc. 86–8795 Filed 4–17–86; 8:45 am]

BILLING CODE 4910–62–M

Agreements Filed During the Week Ending April 11, 1986

Agreements filed with the Department of Transportation, under sections 408, 409, 412 and 414 during the week ending April 11, 1986.

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Apr. 8, 1986	43943	Members of International Air Transport Association	Increase Rates from Syria to TC3.	Feb. 26, 1986.
Apr. 11, 1985	43948	Members of International Air Transport Association	London-Toronto Proportional Fares.	May 1, 1986.
Apr. 11, 1986	43949	Members of International Air Transport Association	Special Amending Resolution North Atlantic-Africa.	May 1, 1986.

Phillis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86–8792 Filed 4–17–86; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended April 11, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order or in appropriate cases a final order without further proceding. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Apr. 10, 1986	43476	Trinidad and Tobago (BWLA International) Airways Corporation, c/o John L. Richardson, Verner, Liipfert, Bernhard, McPherson and Hand, Suite 1000, 1660 L Street, NW., Washington, DC 20036. Amendment No. 1 to the Application of Trinidad and Tobago (BWIA International) Airways Corporation requests permission to amend the application so as to include Washington/Baltimore as a conterminal point with Boston. Answers may be filed by May 8, 1986

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-8793 Filed 4-17-86; 8:45 am]

BILLING CODE 4810-62-M

[Docket 43754]

NWA-Republic Acquisition Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, DC 20590, telephone (202) 426-5560.

Dated Washington, DC, April 15, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-8794 Filed 4-17-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Docket No. 24741; Petition Notice PE 86-8]

Petition of United Airlines for an Exemption From a Portion of Appendix H to Part 121

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: This notice publishes for public comment the petition of United Airlines (United) dated July 30, 1985. The petitioner requested an exemption from a portion of Appendix H to Part 121 of the Federal Aviation Regulations (FAR) to the extent necessary to permit the 1 year instructor employment requirement of the Appendix H, Advanced Simulation Training Program, to be acquired with either United or any other Part 121 air carrier. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities.

DATE: Comments must be received on or before May 8, 1986.

ADDRESS: Send comments on this petition in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Petition Docket No. 24741, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

SUPPLEMENTARY INFORMATION: The FAA originally received the petition for exemption from United Airlines on August 2, 1985. Petitioner requested an exemption from a portion of Appendix H to Part 121 of the FAR to the extent necessary to permit the 1 year instructor employment requirement of the Appendix H, Advanced Simulation Training Program, to be acquired with either United or any other Part 121 air carrier.

On October 31, 1985, the FAA granted Exemption No. 4548 to United Airlines. Thereafter, objections were raised that interested parties had not been afforded the opportunity to comment on the United petition. The FAA has determined that it would be in the public interest to afford the public an opportunity to comment. Based on the comments received by the agency on this notice, the FAA may elect to take no action with respect to Exemption No. 4548, or it may amend or rescind Exemption No. 4548 granted to United Airlines.

Issued in Washington, DC, on April 14, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 86-8672 Filed 4-17-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; Termination of Authority, Atlantic Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Atlantic Insurance Company, under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27109, July 1, 1985.

With respect to any bonds currently in force with Atlantic Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2319.

Dated: April 8, 1986.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86-8683 Filed 4-17-86; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant of section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on May 8, 1986, at 1:00 p.m., the St. Louis Veterans Administration Regional Office Station Committee on Educational Allowances shall at Room 4431, 1520 Market Street, St. Louis, Missouri, 63103, conduct a hearing to determine whether the approval of Robert J. Alongi, d/b/a "Rob's Property Management," 2300 Parker Street, Columbia, Missouri, 65201, under the Emergency Veterans' Job Training Act (Pub. L. 98-77) shall be reinstated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: April 10, 1986.

D.R. Ramsey,

Director, VA Regional Office.

[FR Doc. 86-8726 Filed 4-17-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 75
Friday, April 18, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 12672, dated Monday, April 14, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, April 21, 1986.

CHANGE IN THE MEETING: The following matter has been added to the open portion of the meeting.

Proposed Contract For Expert Services In Connection With A Court Case.

CONTRACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: April 14, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–8803 Filed 4–16–86; 10:37 am]

BILLING CODE 6750–06–M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., April 23, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Consideration of a petition filed by the New York Terminal Conference to amend truck detention rules at the Port of New York.
2. Consideration of a Notice of Proposed Rulemaking relating to conference service contract authority.

Portions closed to the public:

1. Consideration of a petition for reconsideration of the Commission's August 14, 1985 decision not to investigate or suspend a general rate increase by Trailer Marine Transport Corporation and a request for a stay of that increase.
2. Docket No. 85–12—Application of the loyalty contract provisions of the Shipping Act of 1984 to a proposed tariff rule on refunds. Consideration of a petition for declaratory order and comments thereto.

CONTACT PERSON FOR MORE INFORMATION: Tony P. Kominoth, Assistant Secretary, (202) 523–5725.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86–8819 Filed 4–16–86; 12:47 pm]

BILLING CODE 6730–01–M

3

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 23, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 15, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–8796 Filed 4–15–86; 5:10 pm]

BILLING CODE 6210–01–M

4

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 10:00 a.m., Friday, April 25, 1986.

PLACE: Adler Theatre, 100 East Third Street, Davenport, Iowa 52801, (319) 326–8555.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Proposed Revisions to: Part 740: Advertisement of Insurance Status; Part 741: Requirements for Insurance (NCUSIF); Part 745: Clarification and Definition of Account Insurance Coverage.

TIME AND DATE: 1:00 p.m., Thursday, April 24, 1986.

PLACE: River Center, 136 East Third Street, Davenport, Iowa 52801, (319) 326–8500.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions Under Section 208 of the Fedeal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Field of Membership Expansion. Closed pursuant to exemption (8).
4. Board Briefing. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86–8773 Filed 4–15–86; 4:42 pm]

BILLING CODE 7535–01–M

5

NATIONAL CREDIT UNION ADMINISTRATION

Notice of previously Held Emergency Meeting

TIME AND DATE: 12:50 p.m., Monday, April 14, 1986.

PLACE: 1776 G Street, NW., Washington, DC 6th Floor.

STATUS: Closed.

MATTERS CONSIDERED:

1. Merger under section 205(h) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Delegation of Authority to Issue Cease and Desist Order. Closed pursuant to exemptions (8) and (9)(A)(ii).

The Board unanimously voted that the agency business required that a meeting be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under the exemptions stated. The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-8774 Filed 4-15-86; 4:42 pm]

BILLING CODE 7535-01-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 21, 1986.

An open meeting will be held on Tuesday, April 22, 1986, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, April 22, 1986, at 2:30 p.m., will be:

1. Consideration of an interpretive release under Section 28(e) of the Securities Exchange Act of 1934 (the "Act"). The release clarifies the definition of "brokerage and research srvices" in Section 28(e)(3) of the Act and reiterates the disclosure obligations of money managers under the federal securities laws concerning brokerage allocation practices and the use of commission dollars. For further information, please contact Kerry F. Hemond at (202) 272-2848.

2. Consideration of whether to issue a release approving a proposed rule change of the Options Clearing Corporation ("OCC") revising OCC's non-equity option margin system. For further information, please contact Christine Sakach at (202) 272-7393.

3. Consideration of whether to issue a notice of and order for hearing on the application-declaration filed by Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary, Tristar Gas Marketing, Inc. ("Tristar"), under the Public Utility Holding Company Act of 1935 for an order approving: (i) the issuance and sale by Tristar, and the acquisition by Columbia, of common stock of Tristar; (ii) the issuance and sale by Tristar of short-term notes to nonassociated commercial lenders, and the guarantee by Columbia of such notes if necessary; and (iii) as an alternative to such notes, open account advances to Tristar by Columbia. For further information, please contact William C. Weeden at (202) 272-7683.

The subject matter of the closed meeting scheduled for Tuesday, April 22, 1986, following the 2:30 p.m. open meeting, will be:

Chapter 11 proceeding.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive action.

Enforcement matter.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

John Wheeler,

Secretary.

April 14, 1986.

[FR Doc. 86-8779 Filed 4-15-86; 4:42 p.m.]

BILLING CODE 8010-01-M

7

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 8:00 a.m., 28 April 1986.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" [5 U.S.C. 552b(e)(3)].

MATTERS TO BE CONSIDERED:

8:00 Meeting—Board of Regents

(1) Approval of Minutes—13 January 1986; (2) Faculty Appointments; (3) Report—Admissions: (a) Age of Matriculation; (4) Report—Associate Dean for Operations: (a) Budget, (b) Construction, (c) Medical Applications of Advanced Laser Technology; (5) Report—President, USUHS: (a) University Awards, (b) F. Edward Hebert School of Medicine—(1) Certification of Medical School Graduates, (2) Student Awards, (3) Final Report of Liaison Committee on Medical Education, (4) Graduation, (c) Graduate Education—(1) Certification of Graduate Students, (2) Allied Health Sciences, (d) Continuing Medical Education, (e) Informational Items; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents.

New Business

SCHEDULED MEETINGS: July 21, 1986.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295-3049.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 16, 1986.

[FR Doc. 86-8854 Filed 4-16-86; 3:15 p.m.]

BILLING CODE 3810-01-M

federal register

Friday
April 18, 1986

Part II

Federal Emergency Management Agency

44 CFR Part 205

Disaster Assistance: Declaration Process and State Commitments; Crisis Counseling Assistance and Training Program; Temporary Housing and Assistance Program; Eligibility Criteria; Project Administration; Hazard Mitigation; Six Proposed Rules

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Disaster Assistance; Subpart C, the Declaration Process and State Commitments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This document describes several proposed regulation changes in 44 CFR Part 205, Subpart C, most of which are intended to implement the requirement in the Disaster Relief Act of 1974, as amended, 42 U.S.C. 5121 *et seq.*, that Federal disaster assistance be supplemental to the efforts and resources of State and local governments. The most significant aspects of the proposed rule change would be the establishment of: (1) A major disaster declaration decision-making system for public assistance that would incorporate the use of "capability indicators" upon which a *declaration recommendation* for a State could be made by FEMA to the President and areas within the State could be designated for public assistance, and (2) a requirement that Governors of States make commitments on behalf of their States and affected local governments to assume a portion of the otherwise eligible "Public Assistance" costs as part of the non-Federal response and recovery efforts for each Presidentially declared major disaster and emergency. Proposed amendments to Subpart H of 44 CFR Part 205, which are being published concurrently with these proposed amendments to Subpart C, specify the procedures that will be used to determine the portions of otherwise eligible public assistance costs which would be reimbursed by FEMA. This proposed rule also includes changes to the current FEMA regulation relating to agency policy on preliminary damage assessments (PDAs), the consolidated list of debarred, suspended, and ineligible contractors, and the FEMA-State Agreement with regard to certain Indian tribes and Alaskan native villages.

DATES: Comment due date: June 17, 1986.

ADDRESS: Send comments to Rules Docket Clerk, Federal Emergency Management Agency, Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John Lundberg, Office of Disaster Assistance Programs, FEMA, Room 714, 500 C Street, SW., Washington, DC 20472, (202) 646-3688.

SUPPLEMENTARY INFORMATION: FEMA is proposing a rule to be codified within 44 CFR Part 205, Subpart C. The proposed rule would relate directly to parallel changes in 44 CFR Part 205 Subpart H which are being proposed by FEMA concurrently to these proposed changes in Subpart C. The effect of the changes to 44 CFR, Part 205, Subparts C and H would be to more uniformly and objectively implement the requirement in the Disaster Relief Act of 1974, 42 U.S.C. 5121 *et seq.*, (herein "the Act") that Federal disaster assistance supplement the efforts and resources of disaster-affected States and local governments. Federal assistance under the Act is ". . . . designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services and the reconstruction and rehabilitation of devastated areas . . ." [Sec. 101(a); 42 U.S.C. 5121(a)]. Upon declaration by the President of a major disaster, the Act authorizes ". . . . assistance by the Federal Government to State and local governments in carrying out *their* responsibilities to alleviate the suffering and damage which result from such disasters . . . ." (emphasis added) [Sec. 101(b); 42 U.S.C. 5121(b)]. Emergencies are catastrophes which require ". . . . Federal emergency assistance to *supplement* State and local efforts to save lives and protect property, public health and safety . . . ." (emphasis added) [section 102(1); 42 U.S.C. 5122(1)]. Major disasters are catastrophes which warrant assistance under the Act ". . . to *supplement* the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby." (emphasis added) (section 102(2); 42 U.S.C. 5122(2)). In requesting a Presidential declaration of a major disaster, a Governor must "furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (*of which State commitments must be a significant proportion*) will constitute the expenditure of a reasonable amount of funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster." (emphasis added) (section 301(b); 42 U.S.C. 5141(b)).

FEMA and its predecessor agencies responsible for administering disaster assistance under the Act have applied a variety of measures to ensure compliance with the statutory requirement that Federal disaster assistance be supplemental to the efforts of State and local governments. One way FEMA has used to accomplish that requirement has been by carefully reviewing requests for declaration of emergencies and major disasters in order to assure itself that effective response to such situations way beyond the capabilities of the State and the affected local governments. Up to the present time those determinations have been made ad hoc based on information provided by governors in their requests for emergency and major disaster declaration and based upon information collected in a preliminary damage assessment.

Another way in which FEMA has ensured that Federal emergency and major disaster assistance under the Act supplemented the primary response efforts of State and local governments has been by obtaining the agreement of Governors of disaster-affected States to make commitments of State and local resources to recovery operations. These commitments have included the assumption of: (1) The expense of accomplishing work which is necessary for recovery purposes but which is not eligible for Federal reimbursement under the Act, (2) administrative and other costs, sometimes including the cost of hazard mitigation measures to reduce or eliminate the threat of damage and hardship in the future, (3) a combined 25 percent State and local contribution toward emergency and major disaster response and recovery efforts otherwise eligible for reimbursement under the Act.

As a result of the flooding in West Virginia in November 1985, it became evident that even the 25 percent State and local contribution towards response and recovery efforts may be beyond the capability of some applicants which suffer catastrophic losses. Therefore, FEMA began to consider development of a sliding scale cost sharing formula where each applicant would be required to pay a small portion of its claim (a deductible). After payment of the deductible, a sliding scale cost sharing formula which would include a 90 percent Federal share when damages exceeded $10.00 per capita would become effective. Such a sliding scale would allow FEMA to take the funds saved by the deductible and use them to further assist those applicants which suffer catastrophic losses.

Recent enactment of Federal deficit reduction legislation has resulted in an even greater need for FEMA to make the declaration process more uniform and consistent and adopt a sliding scale cost

sharing formula to ensure the commitment of appropriate State and local resources to recovery operations without exceeding their capability. With the significant reductions in Federal spending that will be required in FY 87, overall Federal contributions to State and local governments for major disaster and emergency-related public assistance costs must be reduced from 75 percent to approximately 50 percent of total otherwise eligible costs. FEMA is therefore proposing to establish a uniform and consistent declaration process for major disasters and a sliding scale cost sharing formula. With a requirement to reduce overall Federal expenditures to approximately 50 percent to otherwise eligible costs, the deductible must be slightly higher than would be necessary with 75 percent Federal contributions.

The Comptroller General of the United States, in a report entitled "Requests for Federal Disaster Assistance Need Better Evaluation", CED–82–4, December 7, 1981, recommended that FEMA "Establish written policies, procedures, and guidelines to use when evaluating major disaster and emergency requests and publish them in the Federal Register." That recommendation was substantially complied with when Subpart C was amended in November, 1983. However, FEMA has determined that a more uniform declaration decision-making system containing some objective indicators is needed to ensure that evaluation criteria used in measuring the capability of State and local governments to respond to catastrophes are applied uniformly.

In developing a structured declaration decision-making system, FEMA determined that the need for the various individual assistance programs authorized by the Act is contingent upon the degree of assistance provided by voluntary relief organizations, insurance, other Federal agencies and the financial ability of the individuals affected. No decision making model using objective indicators as a basis for a declaration recommendation for individual assistance has been developed at this time.

In designing a system that would provide for a uniform and consistent measurement of State and local government capability to respond to major disasters, FEMA has adopted the premise that the impact of a major disaster on State and local governments is primarily financial and that the real need of the affected governmental entities requesting assistance under the Act is normally for Federal funds to supplement available State and local funds. Financial capability is best measured by analyzing the capability of State or local governments to raise the funds needed to respond to catastrophes. The declaration recommendation process should not be biased in favor of States or local governments which choose not to tax themselves as much as other States and local governments. Consequently, FEMA has decided to analyze capability to pay, not the willingness or unwillingness to tax, in reviewing requests to the President for major disasters.

The potential financial capability of State and local governments to overcome the effects of disaster damage is directly related to the financial capability of those States or local governments. There are a number of methods currently in use or being considered which provide a measure of State and local financial capability. These include per capita income, the Representative Tax System (RTS), Gross State Product (GSP), and Total Taxable Resources (TTR). The TRS is a system upon which there are widely divergent views concerning its validity, thus FEMA has decided against its use. The GDP and particularly the TTR are currently undergoing close review and may well provide an improved method of determining State capability in the future, but it is too early to make a judgment at this point in time. FEMA also considered the possibility of using budgets as a capability indicator but that was rejected since the size of a budget is more closely related to willingness to tax than to capability. Based on review and discussion of these methods, FEMA has tentatively decided that per capita income would provide the best indicator of financial capability at that time. Congress itself recognizes this relationship in House Report 14370, 92d Congress, Pub. L. 92–514 entitled "General Explanation of the State and Local Fiscal Assistance Act and the Federal-State Tax Collection Act of 1972" prepared by the staff of the Joint Committee on Internal Revenue Taxation. It states: ". . . population weighted by the United States income divided by that of the State . . . recognizes that poorer communities generally have greater difficulty in providing adequate services than rich communities. This is a consequence of the fact that communities that have relatively low per capita income generally have a relatively small tax base. In addition, communities with relatively low per capita incomes tend to have additional problems in providing services for their poorer inhabitants that are usually not encountered in wealthier communities." While it is not a perfect system, it is currently used by other Federal programs as an indicator of financial capability and is therefore generally recognized by States and local governments even though it is not accepted by everyone. This data is available from the U.S. Department of Commerce, Bureau of Economic Analysis (BEA).

The average per capita personal income in the United States was $11,687 in 1983 which is the latest information published. Based on a per capita income of $11,687 it appears reasonable that a State would be capable of providing $1.00 for each resident of that State to cover the cost of State efforts to alleviate the damage which results from a disaster situation. Based on $1.00 per capita, the capability indicators developed for States correlate closely to about 0.1 of one percent of the estimated General Fund expenditures by States. Using $1.00 per capita multiplied times the population of a State and then multiplying that figure by the ratio of a State's per capita personal income to the national average per capita personal income (to provide an adjustment for States that have per capita incomes above or below the National average), an objective indicator, which can be used in the declaration process, will be developed for each State. This indicator would be updated annually. The base capability factor level of $1.00 per capita for States will be adjusted using 1984 income levels. Therefore, the national average per capita income to be used in adjusting the capability indicator will always be the 1984 average. As inflation, deflation or rising or falling income levels push a State's average income upward or downward, the adjustment ratio will reflect the State's changed capability. Clearly, the indicator amount which would be derived using the above system does not constitute an amount beyond State capability. It should be noted that although American Samoa, Guam, the Northern Marianas, the Trust Territories of the Pacific Islands, and the Virgin Islands are defined as States in Pub. L. 93–288, they receive a substantial amount of direct aid from other Federal government agencies. Consequently, FEMA has determined that a reasonable minimum amount for responding to disasters must be established for those units of government which would exceed the amount calculated according to the above formula. During the past fifteen years, seventeen disasters were declared for these units of government. In those 17 major disasters, all had

public assistance costs exceeding $400,000 in current dollars, thus FEMA is considering using that figure as the indicator.

Proceeding from the State to the local government level, responsibility for and capability to perform the necessary disaster-related work increases. FEMA believes that it is reasonable to require local governments with a per capita income approaching the national average to be responsible for the payment of disaster response costs up to $2.50 per capita. Over the years FEMA has been determining capability of local governments in order to designate them as eligible. In the past FEMA has seldom used per capita damage as a basis for designation, but where it was used the figure ranged from $3.50 to $10.00 per capita. Using a per capita cost of $2.50, it is estimated that an average local government would be required to use less than ½ of one percent of its budget for disaster response costs before Federal assistance would be provided in a major disaster area. Consequently, FEMA considers the $2.50 to be fair and is low when compared to capability determinations made in the past. Here again, the $2.50 per capita cost would be adjusted using personal income.

Consequently, FEMA proposes to establish "Public Assistance Capability Indicators" using the formula set forth above. These capability indicators will be updated annually and will be used as an integral part of the declaration decision-making process upon which FEMA will make a declaration recommendation to the President for the public assistance portion of major disasters. These capability indicators will not be the sole basis for recommendations. The fact that eligible disaster damages within a State, as determined by FEMA from a joint Federal/State preliminary damage assessment (PDA), either do or do not exceed the established indicator is not in itself a guarantee that a major disaster will or will not be recommended by FEMA or declared by the President. Other factors must also be considered. If, for example, as a result of a joint Federal/State PDA, it is determined that eligible damages are less than the established capability indicator, a major disaster could still be declared based on factors including but not limited to the following:

(1) Disasters in the current or previous fiscal year for which the governor has declared a state of emergency.

(2) Hazard mitigation efforts taken by State or local governments.

(3) Significant loss of tax base.

(4) Imminent threat to public health and safety.

On the other hand, if FEMA determines from the joint Federal/State PDA that eligible damages exceed the established indicator, a major disaster may not be declared based on factors including, but not limited to, the following:

(1) A significant portion of the damage is to non-essential facilities.

(2) The damage is widespread and the impact on individual applicants is relatively minor.

(3) Assistance available from other Federal programs will help alleviate the impact of the disaster.

(4) Extent and type of insurance coverage available.

The use of indicators as part of the declaration process is expected to reduce Federal outlays for disaster assistance, however, a cost sharing policy will also be necessary if total outlays are to be reduced to an overall 50 percent of otherwise eligible public assistance costs.

Emergencies and major disasters by definition are catastrophies. However, it is clear that some applicants for assistance under the Act are more severely impacted than others. An across the board 50/50 public assistance cost sharing policy would reduce the Federal contribution in the context of public assistance response and recovery costs to 50 percent and would be relatively easy to administer. However, in catastrophic disasters such as the November 1985 flooding in West Virginia, many applicants (even with State assistance) would not have the capability to provide the 50 percent required of them under a 50/50 cost sharing policy. Thus, FEMA is proposing a cost sharing policy that incorporates a sliding scale which will provide a range of Federal assistance from zero percent for applicants that sustained relatively minor damage to 90 percent for those sustaining heavy damage. FEMA's calculations indicate that the proposed cost sharing sliding scale will provide increased Federal assistance to severely impacted applicants and in addition will result in a reduction in Federal contributions for all disasters (cumulative) to approximately 50 percent of total eligible public assistance costs. The proposed cost sharing policy is addressed in Subpart C by proposing to require Governors requesting Presidential declarations of emergency and major disasters under the Act to agree to comply with specific cost requirements which are being proposed concurrently in the Project Administration Subpart (Subpart H of 44 CFR Part 205).

FEMA believes that a number of important benefits would be derived from this policy including the following: (1) There would be uniform and more objective compliance with the statutory requirement that Federal assistance be supplemental to the efforts of State and local governments; (2) Severely impacted applicants will receive greater Federal assistance; (3) Needed reductions of Federal outlays to approximately 50 percent of overall otherwise eligible public assistance costs will result from a consistent contribution of non-Federal funds in the context of Presidential-declared major disasters and emergencies. With cost sharing of projects among Federal, State and local entities, FEMA also expects that there will be reductions in disaster expenses for all levels of government as a result of more deliberate and prudent decisions by both State and local governments about whether to rebuild disaster-damaged public facilities and about how the best minimize damage likely to result from future disasters. Both of these types of economies already have been realized in some situations since 1980. Finally, a uniform cost sharing policy will permit States and local governments to plan more effectively for their responses to future major disasters and emergencies.

As indicated above relative to the proposed disaster indicators, States and local governments have certain capabilities for responding to catastrophies. FEMA proposes to use some of the same per capita figures used to establish State and local government capability indicators to set cost sharing thresholds at which different percentages of Federal assistance would be provided once a declaration is made. The Level I Threshold ($1.00 per capita for States; $2.50 per capita for local governments) is an amount which is presumed to be within the capability of an applicant for Federal disaster assistance to expend on eligible disaster related public assistance response and recovery activities. If an applicant is below the Level I Threshold, no Federal assistance will be provided. The Level II Threshold ($10.00 per capita) represents an amount of funds at which the capability of an applicant to respond begins to be affected to the extent that a greater percentage of Federal contribution is considered appropriate if the applicant is to make a reasonably rapid recovery from the disaster without serious long term disruption of its governmental functions. Between the Level I and Level II Thresholds FEMA would reimburse 75 percent of other wise eligible public assistance costs. Above the Level II Threshold FEMA will reimburse 90 percent of otherwise

eligible costs. The threshold levels will be adjusted in the same manner as the disaster indicators using per capita personal income and will be updated annually. In the case of certain private nonprofit facilities (such as educational, medical and custodial care) where population served cannot be easily determined, the Level I and II Thresholds will be established using one and four percent of the facility's operating budget during the previous fiscal year. These thresholds cannot be directly compared to the corresponding thresholds for local governments due to the fact that private non-profit facilities are operated as single purpose facilities and do not have the same range of responsibilities as local governments.

In those situations since 1980 where Governors have committed States and local governments to cost sharing arrangements, FEMA has required States to agree in the FEMA-State Agreements which are executed after every Presidentially-declared emergency and major disaster to contribute a precise and significant portion of the non-Federal share of public assistance costs. This State portion has generally ranged from 10 percent to 15 percent of otherwise eligible public assistance costs. Although FEMA is required by the Act to obtain a commitment from the State, it is not considered necessary to establish by rulemaking a fixed percentage of the non-Federal share to which the State must agree to contribute. However, in order to insure that emergency and major disaster response and recovery efforts are conducted by all levels of govennment, States are urged to pay only part of the non-Federal share, except in those rare instances where local governments have no funds to contribute in the cost sharing context.

Environmental Considerations

A Finding of No Significant Impact for the publication of these regulations has been made in accordance with 44 CFR 10.9(e) of the FEMA Environmental Regulations which implement the Council on Environmental Quality regulations (National Environmental Policy Act Regulations). Copies of the finding are available from the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, NW, Washington, DC 20472.

Executive Order 12291, "Federal Regulations". This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

This rule will not have a significant economic impact on a substantial number of small entities, within the meaning of 4 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

Accordingly, it is proposed to amend 44 CFR Chapter 1, Part 205 Subpart C as follows:

PART 205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

Subpart C—The Declaration Process

1. The authority citation for Part 205 is revised to read as follows and all authority citations within Subpart C are removed:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; E.O. 12148.

2. Section 205.31 is amended by revising paragraph (b) and adding a new paragraph (j) to read as follows:

§ 205.31 Definitions.

* * * * *

(b) *Commitment.* Certification by the Governor in support of his/her request for a declaration of a major disaster or an emergency, pledging major disaster or emergency-related, extraordinary and unforeseen State and local governmental obligations and expenditures.

* * * * *

(j) *Public Assistance Capability Indicators.* A dollar amount for each State and county which has been developed by FEMA to serve as a relative index of capability to cope with disaster related damages to public facilities.

3. Section 205.32 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 205.32 Policy.

(a) It is the policy of FEMA to provide an orderly and continuing means of Federal assistance to supplement the responsibilities and efforts of States and local governments in fulfilling their obligations to alleviate the suffering and damage which result from Presidentially-declared major disasters and emergencies. Section 301 of the Act, 42 U.S.C. 5141, indicates a Congressional intent that the efforts to respond to major disasters and emergencies lie primarily with the affected State and local governments, and the Federal assistance pursuant to the Act is only to be triggered in the event that effective response is beyond the capabilities of the State and affected local governments. Section 301 of the Act also contains an explicit statement in the context of major disasters that State commitments must be a significant proportion of the combined State and local governmental obligations and expenditures which must be pledged to alleviate the damage, loss, hardship, or suffering resulting from a major disaster. It is FEMA policy to apply this same mandate in the context of emergencies because the rationale for the requirement that State commitments must be a significant proportion of the combined State and local governmental obligations and expenditures is applicable in both emergencies and major disasters.

* * * * *

(d) It is the policy of FEMA to conduct joint FEMA-State damage assessments in response to, or in anticipation of, a major disaster or an emergency request by the Governor. When possible, FEMA encourages these assessments prior to the Governor's request in order to determine more clearly the extent and need for supplemental Federal disaster assistance.

4. Section 205.33 is amended by revising paragraph (c)(5) to read as follows:

§ 205.33 Requests for major disaster declarations.

* * * * *

(c) * * *

(5) A certification by the Governor that the State and local governments agree to assume a share of the public assistance costs otherwise eligible under the Act. The State share must be a significant proportion of the combined State and local share. The State's commitment to assume such portions of the public assistance response costs shall be made by the Governor of the affected State in his/her request for a major disaster declaration and in the FEMA-State Agreement for that major disaster. In the context of gubernatorial requests for Presidential declarations of major disaster for the purposes of providing individual assistance only, the Governor must make appropriate commitments of the State and local governments within the State toward response and recovery efforts. For the purposes of this provision, public assistance includes both grants and direct Federal assistance under the

authority of sections 305, 306, 402, 403, 415, 416, 418(d) and 419 of the Act.

* * * * *

5. Section 205.34 is amended by revising paragraph (c)(2) and (c)(3) to read as follows:

§ 205.34 Requests for emergency declarations.

* * * * *

(c) * * *

(2) Identification of the particular type and specific extent of Federal aid required.

(3) A certification by the Governor that the State agrees to assume a significant proportion of the combined State and local governmental portion of the public assistance costs otherwise eligible under the Act. The State's commitment to assume such portions of the public assistance costs shall be made by the Governor of the affected State in his/her request for an emergency declaration and in the FEMA–State Agreement for that emergency. In the context of gubernatorial requests for Presidential declarations of emergency only for the purposes of providing individual assistance, the Governor must make appropriate commitments of the State and the local governments within the State toward response and recovery efforts. For the purposes of this provisions, public assistance includes both grants and direct Federal assistance under the authority of sections 306, 402, 403, 415, 416, 418(d) and 419 of the Act.

6. Section 205.35 is amended by revising paragraph (a) to read as follows:

§ 205.35 Processing requests for declarations of a major disaster or emergency.

(a) The Regional Director shall provide written acknowledgement of the Governor's request. Based on a FEMA investigation, which shall include a preliminary damage assessment (PDA) of the affected area(s) and consultations with appropriate State and Federal officials and other interested parties, the Regional Director shall promptly prepare a summary of the PDA findings. This data will be analyzed and a recommendation shall be made to the FEMA Director through the Associate Director. The Regional Analysis shall include a determination of State and local resources and capabilities. A capability indicator will be established annually for each State based on $1.00 per capita for State and $2.50 per capita for counties. The capability indicator will be derived by multiplying the population of the State or county by the $1.00 and $2.50 per capita respectively and then multiplying that figure by the ratio of a State's or county's per capita personal income to the national average per capita income. The national average per capita income used in this calculation will be the 1984 average. The capability indicators are intended for use in conjunction with other information provided by the State and the FEMA Regional Director through the preliminary damage assessment process. Formats for additional information were published in the Federal Register of July 27, 1983 (48 FR 34210–34215) and are also available from the Federal Emergency Management Agency, Office of Disaster Assistance Programs, Room 714,500 C Street. SW. Washington, DC. 20472.

* * * * *

7. Section 205.39 is amended by revising paragraph (e)(3) and adding (e)(5) and (e)(6) to read as follows:

§ 205.39 FEMA State Agreements.

* * * * *

(e) * * *

(3) The State will establish and maintain a program to ensure that State and local government recipients of Federal disaster assistance comply with the General Services Administration Consolidated List of Debarred, Suspended and Ineligible Contractors. This program will encompass all State and local contracts pursuant to the Agreement.

* * * * *

(5) The State, and local applicants agree, as a condition of any Federal loan or grant that:

(i) Repair or reconstruction financed under the provisions of the Disaster Relief Act Amendments of 1974 (the Act) shall be in accordance with applicable standards of safety, decency and sanitation and in conformance with applicable codes, specifications and standards, and;

(ii) This State will evaluate the hazards in the disaster area and take appropriate actions to mitigate such hazards on the basis of a hazard mitigation plan, or updates to existing hazard mitigation plans, submitted to the Regional Director by the State not later than 180 days following declaration of the major disaster or emergency, and;

(iii) The State will followup with local applicants to assure that as a condition of any grant or loan under the Act, appropriate hazard mitigation actions are taken by local applicants.

(6) The Regional Director agrees to make Federal technical assistance and advice available to support the planning efforts of State and local applicants. The State understands that future Federal assistance may be curtailed in situations where appropriate hazard mitigation actions have not been implemented.

* * * * *

8. Section 205.39 is further amended by removing paragraph (f)(1) and redesignating (f)(2) through (f)(5) as (f)(1) through (f)(4) and by adding a new paragraph (g) to read as follows:

§ 205.39 FEMA–State Agreements.

* * * * *

(g) When local governmental assistance is authorized for an Indian tribe or authorized tribal organization, or for an Alaskan Native village or organization, and a State is legally prohibited to assume the responsibilities prescribed in these regulations, then such eligible entity may submit a project application in accordance with 44 CFR 205.114, and Federal disaster assistance will be administered in accordance with a FEMA-Tribal Agreement. Such FEMA-Tribal Agreement will provide that the Indian tribe or authorized tribal organization, or the Alaskan Native village or organization, will perform the regulatory or coordinating functions to be performed by a State or its political subdivision as established in this section.

Dated: April 4, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86–8474 Filed 4–17–86; 8:45 am]

BILLING CODE 6718–02–M

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44 CFR Part 205

Crisis Counseling Assistance and Training

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule will establish a cost-sharing formula between the Federal government and States for implementation of the Crisis Counseling Assistance and Training program authorized by section 413 of the Disaster Relief Act of 1974, 42 U.S.C. 5183. This program authorizes assistance for States in meeting the emotional needs of victims of major disasters. This rule amends the existing one only with respect to costsharing between the Federal government and States.

DATES: Interested persons may participate in this rulemaking by submitting comments, which will be accepted until June 17, 1986. Any

comment submitted on or before that date will be evaluated prior to publication of the final rule.

ADDRESS: Send comments to the Rules Docket Clerk, Federal Emergency Management Agency, Office of the General Counsel, 500 'C' Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Individual Assistance Division, Office of Disaster Assistance Programs, Federal Emergency Management Agency, 500 C Street, SW., Room 710, Washington, DC 20472, 202–646–3662.

SUPPLEMENTARY INFORMATION: Under section 413 of the Act, professional crisis counseling services can be provided to victims of major disasters in order to relieve mental health problems caused or aggravated by a major disaster or its aftermath. The assistance is provided primarily in the form of financial aid to State or local mental health agencies or private mental health organizations. The program is intended to supplement the efforts and available resources of the State and local governments. In order to ensure that Federal crisis counseling assistance supplements the efforts and available resources of State and local governments, and in order to accomplish Federal deficit reductions goals, this rule would establish a crisis counseling cost-sharing formula requiring a 25 percent State contribution toward the costs of future crisis counseling activities. The program assistance is short-term and provided at no cost to eligible disaster victims.

The following paragraphs contain explanations of the major changes.

A "General" section has been added to establish the Federal/State program cost-sharing requirements. This sharing of program costs is being implemented as a Federal deficit reduction which is part of the movement to balance the Federal budget.

A sentence has been added in the "Application for Regular Program" section to clarify the intent of requiring States to include mental health disaster planning in the State emergency plans [see (e)(3)(i)(E)]. States must have updated mental health emergency plans after receiving a grant under this program in order to be eligible for a future grant.

Environmental Considerations

This regulation is procedural and FEMA has determined that there will be no significant impact on the environment caused by its implementation. Recently, an amendment to FEMA's final rule on Environmental Considerations (44 CFR 10.8(c)(2)(vii)(K)) was published, which provided a categorical exclusion for Crisis Counseling Assistance and Training.

Regulatory Analysis

This rule has been determined not be a "major rule" within the meaning of Executive Order 12291, for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, a regulatory analysis will not be prepared.

Further, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities and thus, a regulatory flexibility analysis will not be prepared.

Content of the Rule

The rule implements section 413 of the Disaster Relief Act of 1974. It states procedures for obtaining financial assistance for providing crisis counseling services to victims of a major disaster declared under the Act.

List of Subjects in 44 CFR Part 205

Community facilities, Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, it is proposed to amend Part 205 as follows:

1. The authority citation for part 205 is revised to read as follows:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; Executive Order 12148.

2. § 205.59 is revised to read as follows:

§ 205.59 Crisis Counseling Assistance and Training.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State providing/making available crisis counseling services to victims of a major disaster declared under the Act. The total Federal grant under this section, both for immediate services and regular programs, will be equal to 75 percent of the actual cost of meeting mental health needs of disaster victims. The total Federal grant is made only on the condition that the remaining 25 percent of the actual cost of meeting mental health needs is paid from funds made available by the State. The Governor or his/her designee is responsible for the administration of the crisis counseling program.

(b) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 413 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of Health and Human Services (HHS).

(c) *Definitions.* (1) "Associate Director" means the head of the Office of State and Local Programs and Support, FEMA; the official who approves or disapproves a request for assistance under section 413 of the Act.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling and outreach services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group mental health services which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Director, FEMA, to coordinate Federal assistance in an emergency or a major disaster.

(5) "Governor's Authorized Representative (GAR)" means the person named by the Governor in the Federal-State Agreement to execute on behalf of the State all necessary documents for disaster assistance and evaluate and to transmit local government eligible private non-private facility, and State agency requests for assistance to the Regional Director following a major disaster or emergency declaration.

(6) "Grantee" means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 413 of the Act.

(7) "Immediate services" means those screening or diagnostic techniques and services which can be applied to meet mental health needs immediately after a major disaster such as those which may be provided at disaster application centers, shelters, and in the affected communities. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency, prior to and separate from the regular application process for crisis counseling assistance.

(8) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of State and local governments, and disaster relief organizations alleviating the damage, loss, hardship, or suffering caused thereby.

(9) "Project Officer" means the person assigned by the Secretary, HHS, to monitor a crisis counseling program, provide technical assistance and guidance, and be the contact point within HHS for program matters.

(10) "Regional Director" means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Director.

(11) "Secretary" means the Secretary of HHS or his/her delegate.

(12) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(d) *Agency Policy.* (1) It is agency policy to provide funding for crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Associate Director.

(e) *State Initiation of the Crisis Counseling Program.* (1) Assessment. To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental assistance is required. The factors in the assessment must include those described in paragraph (e)(3)(ii)(C) and (D).

(2) *Immediate Services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State of local resources are insufficient to provided these services, the Governor, or his/her authorized representative (GAR), may request and the Regional Director, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process described in the remainder of this section. This request is the Governor's or the GAR's certification that the State will contribute, prior to the implementation of the program, 25 percent to the cost of providing immediate services. The Regional Director shall consult with the Secretary in evaluating the need for immediate services and the State's capability for providing the services. Immediate services are not intended to be a replacement for the regular program. Therefore, funding shall be granted only for that period of time that dose not exceed 60 days following the declaration of the disaster, except that if an application for the regular program under paragraph (e)(3) of this section has been submitted, funding for immediate services may continue until a decision has been made on that application.

(3) Application for Regular Program. Assistance under section 413 is provided primarily in the form of a grant to a State, local or private mental health organization designated by the Governor to administer the crisis counseling program. The Governor or his/her authorized representative shall submit an application to the Associate Director, through the Regional Director, and simultaneously to the Secretary, not later than 60 days following the declaration of the major disaster.

(i) The application represents the Governor's agreement and/or certification:

(A) That the requirements are beyond the State and local governments' capabilities;

(B) That the State will contribute, prior to the implementation of the program, 25 percent of the cost of providing crisis counseling services;

(C) That the program, if approved, will be implemented according to a plan approved by the Associate Director;

(D) To maintain close coordination with and provide reports to the Regional Director, the Associate Director, and the Secretary; and

(E) To include mental health disaster planning in the State's emergency plan prepared under Title II, Pub. L. 93–288. Future funding for Crisis Counseling programs in Presidentially-declared disasters will be contingent on updated State mental health disaster plans.

(ii) The application must include:

(A) Standard Form 424;

(B) The geographical areas within the designated disaster area for which services will be supplied;

(C) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(D) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; and

(E) A plan of services as described in paragraph (e)(4) of this section.

(4) Plan of Services. (i) State administered programs. In accordance with paragraph (e)(3)(ii)(D) of this section, the Governor must submit a plan of services to the Regional Director. The plan of services must include:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) Training plans. If a training program for staff is planned, it must be described, and the number of workers needing such training must be indicated;

(D) Facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of State and local government resources to be committed

to the program, and proposed funding levels for the different agencies if more than one is involved.

(ii) Public or private mental health agency programs. If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area. In order to obtain the financial assistance requested by the Governor, this agency or organization must submit a plan of services, as in paragraph (e)(4) of this section. The Governor's application is not complete without this plan of services.

(f) *Assignment of Responsibilities.* (1) The Regional Director shall:

(i) In the case of a request for immediate services, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's request, and obligate and advance funds for this purpose;

(ii) In the case of a regular program application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Based on the recommendation of the Secretary, recommend approval or disapproval of the application for assistance under this section; and forward the recommendation and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance (through the Secretary) if requested to do so; and

(E) Look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help allevate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section, and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director and the Associate Director; and

(vi) Make the appeal determination involving allowable costs and termination for cause as described in paragraph (i) (3) of this section.

(3) The Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate Federal funds and authorize advances of funds to the Department of Health and Human Services;

(iii) Request that the Secretary designate a Project Officer; and

(iv) Maintain liaison with the Secretary.

(g) *Time Limitations.* (1) Application filing. The Governor or his/her authorized representative must, not later than 60 days from the date of declaration of a major disaster, submit an application to the Regional Director.

(2) Program period. The authorized program period shall not exceed nine months from the first day disaster crisis counselors are trained, or if training is not part of the program, the first day services are provided, except that upon the request of the Regional Director and the Secretary, the Associate Director may authorize up to 90 days of additional program period because of documented extenuating circumstances.

(h) *Eligibility Guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the major disaster and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) *For training.* (i) Those mental health specialists who are employed under or are consultants to the crisis counseling program are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals.

(ii) All Federal, State and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(i) *Grant Awards.* (1) The amount of any regular program shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose. The amount of the grant award will reflect the Federal/State cost sharing of the program. The Associate Director will advance funds to funds to HHS for regular program funding. The Regional Director may advance the Federal share of the funds to a State for immediate services.

(2) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(3) Several other regulations of the Department of Health and Human Services apply to grants under this section. These include, but are not limited to:

45 CFR Part 16—HHS grant appeals procedures

42 CFR Part 50, Subpart D—PHS grant appeals procedures

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)

45 CFR Part 80—Nondiscrimination under progams receiving Federal assistance through the Department of Health and Human Services (effectuation of Title VI of the Civil Rights Act of 1964)

45 CFR Part 81—Practice and procedure for hearings under Part 80

45 CFR Part 84—Nondiscrimination of the basis of handicap in Federally-assisted programs

45 CFR Part 86—Nondiscrimination on the basis of sex in Federally-assisted programs

45 CFR Part 91—Nondiscrimination on the basis of age in Federally assisted programs.

(4) Any Federal funds granted pursuant to this section shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(j) *Reporting Requirements.* (1) Grantees (States, public or private agencies). The grantees shall submit the following reports to the Secretary, the Regional Director, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary;

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of an audit; and

(v) Such additional reports as the FCO, SCO, or Secretary may require.

(2) The Secretary. As part of project monitoring responsibilities, the Secretary shall report to the Associate Director and to the Regional Director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary and the Regional Director. The Secretary may also be required to provide special reports, as requested by the FCO. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(k) *Financial Accountability.* All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Associate Director a final accounting of all expenditures for the program and return to FEMA all excess Federal funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(l) *Federal Audits.* The crisis counseling program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, the Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-8475 Filed 4-17-86; 8:45 am]

BILLING CODE 6718-02-M

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44 CFR Part 205

Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule incorporates cost-sharing changes to the Federal Emergency Management Agency (FEMA) program regulations for the Temporary Housing Assistance Program under Section 404 of the Disaster Relief Act of 1974. This Act requires that Federal disaster assistance be supplemental to the efforts and resources of State and local governments.

DATE: Comments due on or before June 17, 1986.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Sarah L. Wise, Individual Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 'C' Street, SW., Washington, DC 20472, (202) 646-3657.

SUPPLEMENTARY INFORMATION: FEMA is proposing a change to the current Temporary Housing Assistance Program regulations that would establish cost-sharing with State governments when providing mobile homes as a form of temporary housing. At the time of publication of this proposed rule, FEMA is in the process of adopting a final rule concerning temporary housing. This rule was published in proposed form on December 6, 1985, at 50 FR 49959. For purposes of comments on this proposed cost-sharing rule, there will be no substantial changes between the proposed rule published in December and the final rule to be adopted. Specifically, States would be responsible for providing 25 percent for the (1) installation of or repairs to private mobile home sites, (2) upgrading of commercial sites which may also include installation of utilities, and (3) development of groups sites where a State has been unable to obtain funding from other non-Federal sources to provide the sites. In addition, the change provides for States to be responsible for all site maintenance and customary public services costs on group sites. These costs would include, but are not limited to, police and fire services, snow removal, garbage collection, basic utility services, etc.

An environmental assessment resulting in a finding of no significant impact has been prepared for this specific rulemaking action in accordance with 44 CFR 10.9(e) and pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508). Copies may be inspected or obtained at the Office of Disaster Assistance Programs, Individual Assistance Division, or at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

This rule has been determined not to be a "major rule" within the meaning of Executive Order 12291, for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic areas; and

(3) It will not have a significant adverse impact on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Over the last three years, FEMA has provided assistance to 43,443 applicants of which 2100 (4.8 percent) were placed in mobile homes. During this period FEMA incurred minimal costs to upgrade commercial sites. However, 43 percent of the mobile homes were placed on private sites at an average cost of $1,487, and 26 percent were placed on group sites at an average cost of $5,629 per unit. Based on an average of 123 mobile homes per operation, a projected average State share of providing private and group sites (assuming the State cannot obtain non-Federal funding for the group site need) would be $64,735. Given the total amount of financial assistance that the State routinely contributes toward disaster relief, this cost sharing of mobile home sites for less than five percent of the displaced households

would not result in a major increase to a State government.

Further, the program applies to individuals and thus it is certified it will not have a significant economic impact on a substantial number of small entities.

Therefore, no further regulatory analyses have been prepared.

List of Subjects in 44 CFR Part 205

Disaster assistance grant programs, Housing and community development.

Accordingly, it is proposed to amend Part 205 as follows:

1. The authority citation for Part 205 is revised to read as follows:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; Executive Order 12148.

2. In § 205.52, revise paragraphs (g)(3)(i)–(iii) to read as follows:

§ 205.52 Temporary housing assistance.

* * * * *

(g) * * *

(3) * * *

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. When the Regional Director determines that upgrading of commercial sites or installation of utilities on such sites will provide more cost-effective, timely, and suitable temporary housing than other types of resources, he/she may authorize such action. FEMA shall provide 75 percent of such costs of upgrading commercial sites and/or installation of utilities. The remaining portion of such costs shall be provided by the State.

(ii) A private site is a site provided or obtained by the applicant at no cost to the Federal Government. The Associate Director has determined that where necessary to properly set up a mobile home the cost of installation of or repairs to essential utilities on private sites is authorized when such actions will provide more cost-effective, timely, and suitable temporary housing than other types of resources. FEMA shall provide 75 percent of the cost of installation of or repairs to essential utilities on private sites. The remaining portion of such costs shall be provided by the States.

(iii) A group site is a site which accommodates two or more units and is provided or obtained by a State, local government, or other entity, completely developed with all essential utilities at no cost to the Federal Government. In addition, the State shall be responsible for all site maintenance and public services on group sites once initial construction is completed. For the purposes of these regulations, site maintenance and public services include, but are not limited to, police and fire services, snow removal, garbage collection, basic utility services, etc., and does not include responsibility for the units placed on the group site. Based upon a recommendation from the Regional Director, the Associate Director may authorize FEMA's payment of 75 percent of the costs for the development of group sites, excluding site maintenance and public services, when all other efforts to obtain funding from non-Federal sources have been exhausted. The remaining portion of such costs shall be provided by the State.

* * * * *

Dated: April 4, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86–8476 Filed 4–17–86; 8:45 am]

BILLING CODE 6718–02–M

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44 CFR Part 205

Disaster Assistance; Subpart E—Public Assistance—Eligibility Criteria

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart of the disaster assistance regulations provides policy and guidance for determinations of eligibility of work, and eligibility of costs in the administration of the Disaster Relief Act of 1974, as amended, Pub. L. 93–288, (42 U.S.C. 5121 et. seq.). The existing rule is revised to reflect clarifications in policy since the previous publication of this subpart in August 1980. Portions of the material have also been revised to clarify procedures and organization of the regulation. Also, the proposed rule published February 3, 1984, (49 FR 4222–4224), is withdrawn and replaced by the applicable section of this proposed rule.

DATE: Comment due date: June 17, 1986.

ADDRESS: Send comments to Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles Stuart, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646–3691.

SUPPLEMENTARY INFORMATION: This proposed rule updates the public assistance section of the disaster assistance regulations (Subpart E). Changes have been made to accommodate new legislation affecting disaster assistance. Policy changes previously published as separate regulation changes are incorporated in this general revision.

Other changes have been made to more clearly separate the three major sections of the regulations: Applicant eligibility, work eligibility, and cost eligibility. Some sections on procedural matters have been transferred to the administrative section of these regulations (Subpart H). Some sections have been revised to clarify existing policy where experience has shown that such clarification is necessary. The administrative changes and other minor revisions will be discussed first and then the more significant changes will be reviewed.

A definition of "consumable supplies" has been added to differentiate between those items incidental to the operation of a facility and those items which are a major part of the facility itself.

A definition of "improved property" has been added to more clearly define the conditions under which debris clearance and emergency protective measures can be justified. Property to be protected by such emergency work must be improved property, i.e., a facility, structure or equipment, rather than natural land or agricultural land.

A definition of "disaster proofing" has been added to codify the policy which was contained only in handbook format previously.

Under the definition of "private nonprofit facility" the definition of "medical facility" has been expanded to include the subdivisions of facilities under that general category. The criteria for these subdivisions were previously only available on a case by case basis.

Previously, all facilities belonging to eligible private nonprofit (PNP) organizations were identified as "Category H" with no breakout to differentiate between a building or a road or other facility. In the proposed rule each type of facility will be identified by the appropriate category letter (A, B, etc.) and its private nonprofit ownership will be identified by the special applicant code to be used for private nonprofit organization applicants.

Under the small project grant (section 419) and flexible funding [section 402(f)] provisions of the Act, an applicant has the option of building facilities different from those damaged or destroyed by the disaster. The proposed regulation more clearly spells out which projects may be included when calculating the amount of the FEMA grant. It also spells out the

types of projects on which these grants may be expended.

The conditions under which damages to private property may be repaired when that damage is the result of an applicant's actions, are defined. Such repairs must be necessary to protect lives, improved property or public health and safety pursuant to section 306 of the Act, because ordinary private individuals are not eligible to receive assistance under section 402 of the Act.

The provisions concerning relocations of facilities that are necessary to mitigate a flood or other hazard have been consolidated and clarified. If FEMA determines there is a practicable alternative to restoring the facility at the original hazardous location, the applicant has three options available: (1) A grant-in-lieu to restore a facility eligible for full replacement with another facility with the same function at a non-hazardous location in which case the total cost of building the facility is eligible after the applicant has provided the site and all road and utility service to the site; (2) a flexible funding grant; or (3) the flexible funding feature of a small project grant. Options 2 and 3 also require that no portion of the grant be used on the facility at the original hazardous location and the eligible costs are limited to the estimated costs of restoration at the original location. In addition, no similar facility built subsequently on the original site would be eligible for permanent restoration assistance unless the hazard has been mitigated. All of the above provisions are part of existing policy but they are now all covered in one place.

The criteria for the eligibility of emergency work such as debris removal or emergency protective measures have been separated for the two types of work. The old regulation contained one set of criteria for a determination of public interest which was then applied with exceptions or additions depending on the type of work. The proposed language does not change the basic criteria for eligibility but it presents them more clearly.

The proposed rule incorporates the policy concerning facilities damaged by earth movement that was clarified by memoranda issued in 1984. Under Pub. L. 93–288, FEMA may assist in the repair and reconstruction of facilities damaged by a major disaster or emergency. Natural ground by itself is not a facility and its restoration is not eligible for FEMA assistance. If the loss of natural ground by landslide or erosion threatens significant damage to improved property, then emergency measures may be taken to protect the improved property. In other situations a facility may be damaged by subsidence of the supporting ground under the facility. Included in the eligible work of restoring the facility is restoration of the ground along with the means to retain that ground and the facility in place. As is often the case with landslides, there may be some question about the stability of general area under the facility. If determined necessary, FEMA will fund a geological investigation of the site. If the site is found to be unstable then the applicant will be required to stabilize the site before FEMA will approve funding for restoration of the facility. All of the above provisions and requirements are now more clearly spelled out in the proposed rule.

Additional criteria have imposed on the eligibility of local governments for disaster assistance. As a result of the recently enacted Federal deficit reduction legislation, funding for all Federal domestic programs is being reduced and some disaster assistance funding that has been provided in the past will not be available in the future. Thus, some cuts in disaster assistance must be made. In an effort to make those cuts as equitable as possible FEMA is proposing a number of actions which will result in a reduction in Federal disaster assistance dollars being provided. However, for those communities suffering catastrophic losses, Federal assistance will actually be increased. Those proposals include establishing objective State and local capability indicators which are expected to reduce the number of major disasters declared (Subpart C, being published concurrently with this proposed rule), and cost sharing formulas which will reduce the amount of Federal disaster funds expended but at the same time direct funds to the State and local governments with the greatest need (Subpart H, being published concurrently with this proposed rule).

In § 205.72(a), FEMA proposes to limit Federal disaster assistance to those local governments which provide governmental services to the general public and which are governed either by persons elected by the general public or by persons appointed by persons so elected. This may eliminate Federal disaster assistance to a number of special purpose local governments (including Levee Districts, Irrigation Districts, and Reclamation Districts) that have been formed to provide specific services to select groups of people. FEMA considers this restriction necessary in order to concentrate limited Federal disaster assistance funds on those local governments that serve the vast majority of the people. If there is a need for emergency work to be done on the property of one of these ineligible local governments, an eligible applicant such as the State or County government may be approved to perform the work.

The provisions governing assistance to a rural community or unincorporated town or village have been clarified. It has been determined that permanent restoration work as well as emergency work should be eligible for these applicants. The requirements that ownership of a facility be vested in a nonprofit organization and that the application is made through the State or political subdivision thereof are maintained. The type of facility which would be eligible is restricted to roads, streets and bridges. The other types of essential facilities serving a rural community such as utilities, medical, emergency and education facilities will be eligible as private nonprofit facilities under section 402(b) of the Act.

Debris clearance from roads on the Federal Aid System will be eligible for FEMA assistance regardless of whether the Emergency Relief Program of Title 23, administered by the Federal Highway Administration (FHWA), is implemented. Previously, FEMA assisted this debris clearance only if the Title 23 assistance was not implemented for a particular county. If the FHWA program is implemented for a county, any debris removal which is incidental to the highway repairs being assisted by FHWA will also be assisted by FHWA. However, there may be Federal Aid roads in the same county which have debris on them but have suffered no damages. FEMA may only assist the removal of such debris when FEMA criteria are satisfied. By this change in the regulation, FEMA will now treat all roads uniformly for purposes of debris removal assistance eligibility.

FEMA has reexamined the justification for certain emergency work assistance and the extent of emergency protective measures when such work is justified. One justification for an emergency protective measure is that it will eliminate an *immediate* hazard which threatens significant damage to improved public or private property. If the protective measure provides protection from a hazard with an occurrence frequency of only once in five years, then that hazard should not be considered *immediate*. Therefore, in the proposed rule the extent of emergency work which will be eligible is only that necessary to provide protection against a storm which could reasonably be expected to occur within one year. The requirement is maintained

that such protective measures must be cost effective when compared to the value of the improved property protected. Work that would be affected by this provision could include construction of a levee to protect improved property because the disaster had rerouted a river or stream such that it threatened the property, placement of sand on a beach to prevent undermining of a facility or structure or to protect against wave action, or removal of debris in a natural stream that would cause flooding that could threaten improved property.

When emergency work is necessary on a disaster damaged flood control facility because improved property is threatened, such work is limited to restoring protection from a one-year event or the predisaster level, whichever level of protection is lesser. Permanent repair of flood control works is the primary responsibility of the U.S. Army Corps of Engineers (COE) but the COE authority does not cover reimbursement for applicant performed work. Therefore, FEMA may provide assistance for such emergency work performed by the applicant immediately after the disaster subject to the limitations noted above.

The eligibility criteria for cleanout of debris from debris catch basins have been modified. To perform its intended function of lessening the threat of downstream flooding, a basin should be maintained with some available capacity to retain debris. Under current regulations, FEMA has required this maintained capacity to be 75 percent of the design capacity of the basin. However, this has resulted in some basins having much more capacity than necessary and some having not enough, because factors other than expected debris production may influence the size of the basin. Therefore the proposed procedure will be to allow an applicant to determine the proper storage capacity at which its debris basins should be maintained. The applicant will be required to provide evidence that it has maintained a basin to its own criteria by regular cleanout or no assistance for cleanout will be eligible.

A similar requirement will apply to debris removal from water storage reservoirs and flood control channels. An applicant will be required to provide evidence that a regular program of cleanout was used to maintain a specified storage capacity of a reservoir or the flow capacity of a channel.

The requirements for codes, specifications and standards to be applicable to FEMA funded construction have been reviewed and modified in the proposed rule with the purpose of promoting mitigation of natural hazards. Standards for new construction which an applicant has adopted in writing and has been employing in the construction of its facilities will continue to be applicable to FEMA funded work. When there is no local standard and FEMA believes that use of a new standard will mitigate the effects of a hazard on a facility being restored with FEMA assistance, the applicant will be encouraged to adopt that standard as applicable to all similar facilities within its jurisdiction. If the suggested standard is adopted by the applicant, FEMA may approve it as being applicable to the replacement of the facility destroyed by the current disaster. If the standard is not adopted, assistance may only be available to replace a facility to its predisaster configuration without the incorporation of new standards. With this policy the applicant will have more incentive to adopt standards for mitigation than under the existing regulation because the assistance will be tied to the adoption of a standard. Under current rules FEMA may prescribe a standard that is applicable only to the FEMA funded project even if the applicant does not agree to use the standard for other future projects. FEMA believes that the new procedure will achieve more mitigation than under the old system. However, if an exact replacement of the facility would result in a threat to public health or safety, FEMA may still incorporate mitigating features in the project to disasterproof it from the effects of future events.

This same principle for the use of standards has also been applied to the replacement of highway bridges. Under current regulations, FEMA may replace a destroyed bridge with one of a specified width based upon the amount of traffic that uses the bridge. The extra cost of the wider bridge is generally eligible, regardless of whether the applicant adopts the standard for its own facilities in the future. Under the proposed rule, the applicant will be required to adopt the bridge width standard in order for FEMA to fund the extra cost of incorporating the standard on the bridge destroyed by the current disaster. The foregoing policy is based on the principle that State and local governments should be willing to use the same standards for locally funded projects that FEMA is expected to use for Federally assisted projects.

In 1982 Pub. L. 97–92 was enacted which required that a school district's damages must exceed the lesser of $10,000 or five percent of the district's prior year operating expenditures before it is eligible for Department of Education assistance in a major disaster. That requirement has been continued by each subsequent year's appropriation for the Department of Education. The current FEMA regulations [§ 205.75(h)(5)] require that private nonprofit educational facilities must meet the same eligibility criteria that the Department of Education requires for public schools. Therefore, the threshold criteria for minimum damages is extended in the proposed rule to private nonprofit educational facilities. Also in keeping with Congressional intent in passing Pub. L. 97–92, the threshold is applied to institutions of higher education, both public and private nonprofit. Provision is also made that the FEMA threshold will change if the Department of Education threshold is changed by subsequent legislation.

The section of the regulations concerning the eligibility of facilities which were under construction at the time of the major disaster has been reviewed in the light of past experience. If the construction is being done by an applicant's own forces, then the facility is owned by the applicant during the entire construction period. Assistance would be available under the same criteria as any other applicant owned facility with a few minor exceptions. For a facility under construction by a contractor, the facility is still the responsibility of the contractor until it is accepted by the State or local government as the owner. That responsibility is considered in the contractor's bid on the facility and the contractor is paid to accept such responsibility. A prudent contractor will obtain Builder's All Risk insurance to cover damages caused by a major disaster or emergency. Therefore, the contractor should not expect assistance to be available from FEMA. The proposed rule states that an application may not be made by an applicant on behalf of a contractor for damages to facilities which were the responsibility of the contractor.

The eligibility of repairs to applicant owned equipment that is damaged while performing eligible work has been modified. Under existing rules, the FEMA equipment rate is intended to cover eligible costs of ownership and operation including all maintenance and repairs. Based on our experience of recent years we have concluded that some disaster related damages to equipment are significantly more costly than the repair element included in the FEMA equipment rate. Therefore, the proposed rule will allow as an eligible cost, repairs of damages to working equipment that could not have been reasonably avoided. Repair of damages

to applicant owned equipment parked at its normal storage location will continue to be eligible.

A number of provisions concerning insurance costs and recoveries have been clarified or modified in the proposed rule. The provision requiring deduction of actual insurance proceeds or potential proceeds from insurance required to be purchased as a condition of prior Federal assistance is reworded for clarity.

Another new provision concerns the costs of prosecuting claims against parties which may have caused or aggravated an applicant's damages or against parties obligated to make reimbursement for damages. This latter group would include insurance companies. Currently, eligible costs are reduced by any recoveries or portion of recoveries which duplicate eligible costs. As an incentive for an applicant to pursue such claims, reasonable costs of prosecuting claims may be deducted from the recovery before making reimbursement to FEMA. However, the costs of prosecuting claims against the Federal government will not be eligible.

The eligibility of costs applicable to major disaster or emergency work has been under review by FEMA for some time. Discussions were held with representatives of the National Emergency Management Association (NEMA) on this subject. Their recommendations were taken into account in formulating proposed changes which were published in the **Federal Register** on February 3, 1984 (49 FR 4222–4224). The proposed changes also took into account the sharing of costs between Federal and non-Federal interests and the statutory requirement that public assistance be supplementary. (The subject of cost sharing and State and local commitments is discussed in detail in proposed rules, 44 CFR Part 205, Subparts C and H, being published concurrently with these proposed regulations.) A number of comments were received on the first publication of the cost eligibility rule and were taken into consideration for the proposed changes contained in this publication of the complete eligibility section. Except for changes made in response to those comments and those required by the Single Audit Act of 1984, what follows is excerpted from the February 3, 1984, Supplementary Information section. The following changes in the cost eligibility subsection of the regulation (44 CFR 205.76) are proposed:

(a)(1) Definitions of total eligible costs and net eligible costs are given to reflect sharing of costs by Federal and non-Federal interests. Selected other criteria are clarified.

(a)(5) *Administrative Expenses*—This proposed change makes eligible an allowance for administrative expenses and provides a method for calculation of such an allowance. The percentage allowances for applicants' administrative costs were arrived at through FEMA's experience in dealing with disaster claims. While these costs have not been eligible in the past and therefore were not included in assistance claims, applicants have frequently advised us of the impact of these costs. In the regulation the list of items which are currently ineligible would be covered by the administrative allowance. In addition certain insurance costs which are now ineligible will also be included in the allowance. The basis for using a percentage of eligible disaster costs instead of actual expenses is one of relieving administrative burden on the applicant. There are a great many different types of indirect and administrative expenses, some of which are more directly related to disaster response and recovery work than others. Some are not related to the disaster at all. An applicant would be required to keep track of these expenses and determine what portion was related to the major disaster or emergency. In addition, FEMA would have to review the applicants' claims to verify the eligibility of these items. The use of a flat rate percentage will eliminate this burden on both parties. The actual rate was set to cover only the extraordinary expenses incurred as a direct result of the disaster. This is in accordance with the supplementary nature of FEMA assistance as intended by Pub. L. 93–288. The percentage is an average of a sample of a number of different communities. It will be the same for all applicants.

This practice has worked well for a number of years in the allowances for the use of applicant owned equipment to perform eligible disaster work.

(a)(7) The proposed change makes certain costs of State inspectors eligible for reimbursement.

(a)(18) *National Guard*—Most types of National Guard expenses would now be eligible, including security work.

(a)(21) *Prison Labor*—Certain costs of guards and food and lodging for prisoners and guards would be eligible.

(b)(1)(iii) *Fringe Benefits.* The current regulations provide that additives to the gross pay of employees of an applicant for employee benefits are not an eligible cost. The basis for this policy was that for regular employees who are only temporarily diverted from their regular job to disaster work, the cost of most employee benefits do not change and therefore there is little disaster related extraordinary cost. The extra cost of those benefits that did increase was considered a part of the applicant's contribution to the disaster recovery effort. Extra employees hired specifically for the disaster normally only received those benefits mandated by Federal or State law and did not receive pension or leave benefits. Those costs which were incurred were also considered as part of the applicant's contribution. In 1984, in recognition of the sharing of public assistance costs between Federal and non-Federal interests which was then in practice, FEMA considered changes to the eligibility of disaster costs. Fringe benefits applicable to force account labor were among those items under consideration. FEMA proposed that an allowance of 10.5 percent of direct labor costs would be eligible for the applicant's regular employees to cover those fringe benefits which represented extraordinary disaster related costs. Similarly, it was proposed that all fringe benefits actually paid for extra hire labor would be eligible as extraordinary costs. A number of comments were received on this part of the proposed rule when it was published. It was noted that there would be a bookkeeping burden to keep track of those fringes which were actually reimbursed and those which were not. The proposed rule also provided that applicants receiving categorical grants (over $25,000) could submit actual costs of the designated coverages and be reimbursed on that basis. This was perceived as being unfair to the applicants for small project grants (under $25,000).

In the interest of simplifying paperwork for all applicants and of fairness to the small applicants, FEMA is now proposing that all fringe benefits for force account labor, regular employees and extra hires performing eligible work, will be allowed as eligible costs. This proposal will result in reimbursing applicants for some ordinary costs which would be incurred with or without the disaster but it will also simplify the administration of disaster assistance.

The proposed rule published February 3, 1984 (49 FR 4222–4224) is withdrawn and replaced by the applicable section of this proposed rule.

Environmental Considerations

A Finding of No Significant Impact for the publication of these regulations has been made in accordance with 44 CFR 10.9(e) of the FEMA Environmental Regulations which implement the Council on Environmental Quality regulations (National Environmental

Policy Act Regulations). Copies of the finding are available from the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C St., SW, Washington, DC 20472. Executive Order 12291, "Federal Regulations". This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

This rule will not have a significant economic impact on a substantial number of small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, Title 44 Code of Federal Regulations Part 205 is proposed to be amended as follows:

Subpart E—Public Assistance

1. The authority Citation for Part 205 is revised to read as follows and all authority citations found within Subpart E are removed:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978, E.O. 12148.

2. Subpart E, 205.70 to 205.76 is proposed to be revised to read as follows:

Subpart E—Public Assistance

Subpart E—Public Assistance

§ 205.70 General.

This subpart provides policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs under Pub. L. 93–288, as amended. It includes criteria for determining eligibility of assistance under sections 305, 306, 402, 415, 416, 418(d), and 419 of Pub. L. 93–288, as amended. Assistance under this subpart must conform to requirements of 44 CFR Part 205 Subparts H, J, K, M, and N, and to 44 CFR Parts 9 and 10 of these regulations.

§ 205.71 Definitions.

(a) "Bridge" means a structure including supports erected over a depression or an obstruction, as water, highway or railway, and having a track or passageway for carrying trafffic or other moving loads and having an opening measured along the center of the roadway of more than twenty feet between undercopings of abutments or spring lines of arches or extreme ends of openings for multiple boxes; may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

(b) "Consumable Supplies" means those incidental items consumed in the operation of a facility such as office supplies, cleaning supplies, or treatment chemicals. It does not mean those items of stock available for sale or distribution such as liquor stocks or lottery tickets.

(c) "Culvert" means any structure under the roadway with a clear opening of twenty feet or less measured along the center of the roadway.

(d) "Disaster proofing" means any modification or improvement in design of a facility, or system of which the damaged facility is a part, or any protective measure or technique, whether or not it is an integral part of a damaged facility, which will reduce the potential for damages to the facility.

(e) "Educational institution" means:

(1) Any day or residential school which provides elementary education, as determined under State law.

(2) Any day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(3) Any institution of higher education in any State which:

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(ii) Is legally authorized within such State to provide a program of education beyond secordary education,

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

(iv) Is a public or a nonprofit institution, and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited:

(A) Is an institution with respect to which there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes, any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provision of paragraphs (e)(3) (i), (ii), (iv) and (v) of this section.

(f) "Emergency work" means that work which must be done immediately to save lives and to protect property and public health and safety, or to avert or lessen the threat of a major disaster.

(g) "Force account" means an applicant's own labor forces consisting of its regular and extra employees.

(h) "Improved property" as used in a determination of a need for debris removal or emergency protective measures, means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(i) "Permanent work" means the restorative work that must be done through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and in conformity with current applicable codes, specifications, and standards.

(j) "Predisaster condition" means the state of repair or serviceability of a facility immediately prior to the disaster, taking into consideration prior damages, age, deterioration, and any limitations upon its operation.

(k) "Predisaster design" means the size and capacity of a facility at the time the major disaster occurred.

(l) "Private nonprofit facility" means any provate nonprofit educational, utility, emergency, medical, and custodial care facility, including those for the aged or disabled. Further definition is as follows:

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include:

(i) Buildings, structures and related items used primarily for athletic exhibitions, contests, games or other events for which admission is charged to the general public, such as athletic

stadiums, gymnasiums, and swimming pools.

(ii) Buildings, structures and related items used primarily for religious purposes or primarily in connection with any part of the program of a divinity school, or department of divinity, which means an institution or a department or a branch of an institution the program of instruction of which is designed for the education of students:

(A) To prepare them to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation), or

(B) To prepare them to teach theological subjects.

(2) "Utility" means buildings, structures, or systems of any power, energy, telephone, water supply, sewage collection and treatment, or other similar public service. A private nonprofit irrigation system is not a "utility".

(3) "Emergency facility" means those buildings, structures, equipment, or systems used primarily to provide emergency services, such as fire protection, ambulance, or rescue, to the general public.

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(i) "Hospitals" includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(ii) "Outpatient facility" means a facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients):

(A) Which is operated in connection with a hospital, or

(B) In which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State: or

(C) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment service.

(iii) "Rehabilitation facility" means a facility which is operated for the primary purpose of assistance in the rehabilatation of disabled persons through an integrated program of

(A) Medical evaluation and services, and

(B) Psychological, social or vocational evaluation and services, under competent professional supervision, and in the case of which

(C) The major portion of the required evaluation and services is furnished within the facility; and

(D) Either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(iv) "Facility for long-term care" means a facility (including an extended care facility) providing in-patient care for convalescent or chronic disease patients who require skilled nursing care and related medical services:

(A) Which is a hospital or is operated in connection with a hospital, or

(B) In which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(5) "Custodial care facility" means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who do not require day-to-day care by doctors or by other professionals but do require close supervision and some physical constraints on their daily activities.

(m) "Private nonprofit organization" means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(n) "Roads and Streets" are further defined for purposes of snow removal assistance as:

(1) "Local roads and streets" means county roads and city streets which do not serve thru traffic and are of only local interest. Their main function is to provide access to abutting property. These normally will include alleys and cul-de-sacs and residential streets.

(2) "Collector roads and streets" means local roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest.

(3) "Minor arterial roads and streets" means roads and streets which serve thru traffic and provide access to higher type roads, connecting communities in nearby areas in addition to serving adjacent property.

(4) "Principal arterials" means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property. (For further clarification, refer to the functional classifications for highways as determined pursuant to 23 CFR 470.107(b)(3).

(o) "School district" means the local governmental jurisdiction; or, in the case of private nonprofit institutions, the church diocese or other organizational unit from which the school receives its primary funding. In the case of public institutions of higher education it means all branches of an institution referred to by a common name.

(p) "Standards" as used in this subpart means codes, specifications or standards for the construction of facilities. It does not include requirements for additional amenities or features that were not part of the predisaster facility which would increase capacity or permit new services to be undertaken, even though such amenities or features would be called for if the facility were to be designed new following the disaster or emergency.

(q) "Under construction" means that period of time from the initiation of construction by applicant forces to final completion of all work or from the award of the prime contract to the applicant's final acceptance of the facility from the contractor. If provided for in the written contract, the applicant may take beneficial occupancy of a portion or portions of the facility from the contractor before the total facility is completed. If such portions of the facility become the responsibility of the applicant, then they would no longer be considered to be under construction.

§ 205.72 Applicant eligibility.

(a) State or local governments, as defined in 44 CFR Part 205, Subpart A, owning or responsible for facilities within the disaster area designated by the Associate Director, are eligible applicants.

(1) The governing body of the local government applying for assistance is either elected by all persons of legal voting age residing within its boundaries, whether such person is or is not a property owner; or, it is appointed by the governing body of another governmental entity which is so elected; and

(2) The local government applying for assistance, or the governmental entity which appoints the governing body thereof, has taxing or assessing authority over all persons residing within its boundaries or using its services; and

(3) The local government applying for assistance, or the governmental entity which appoints the governing body thereof, was chartered for the primary purpose of providing governmental service(s) to the general public within its service area.

(b) Private nonprofit organizations or institutions, owning and operating educational, utility, emergency, medical or custodial care facilities, are eligible applicants. [See § 205.71(1)].

(c) An Indian tribe (or authorized tribal organization or Alaska Native village or organization) is also an eligible applicant.

(d) A public entity is eligible for assistance when its application is submitted by a State or a political subdivision of the State. Organizations which are chartered for a public purpose and whose direction and funding are provided primarily by one or more political subdivisions of the State are normally considered to be public entities.

(e) Any rural community or unincorporated town or village may be eligible when an application for Federal assistance is made by a state or a political subdivision of the State on its behalf. [See § 205.73(e)].

(f) Eligibility of applicants for emergency snow removal assistance.

(1) To qualify as an eligible applicant, any State or local government (as defined in Subpart A of these regulations) must have adequately documented responsibility for emergency snow removal from thru public roads or thru public streets.

(2) Private nonprofit organizations are not eligible.

§ 205.73 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be for a purpose set forth in the Act and these regulations,

(2) Be required as the result of the major disaster or emergency event,

(3) Be located within a disaster area designated by the Associate Director, and

(4) Be only that necessary to restore damaged facilities to predisaster design in accordance with current applicable standards.

(b) *Assistance under Other Federal Agency (OFA) programs.* Disaster assistance under the Act is not available for assistance which other Federal agencies may fund under their own statutory authorities. When another Federal agency has authority and the necessary funds available to restore facilities damaged or destroyed by a major disaster or emergency, that OFA funding authority shall be used instead of FEMA funding.

(c) *Maintenance.* Work of the same type as that normally performed as maintenance is eligible only if the work is:

(1) Of disaster scope and magnitude, and

(2) Essential to restore the predisaster condition and design of the damaged or destroyed facilities, and

(3) Performed on an expedited basis.

(d) *Restoration of leased facilities.* (1) Applicant-owned facilities, which are leased to organizations which are not eligible applicants, are eligible to the extent of the applicant's repair and maintenance responsibility under the lease. If the facility is owned by a private nonprofit organization, it must be used for one of the eligible uses listed in the definition of private nonprofit facility [see § 205.71(1)].

(2) Facilities owned by an organization which is not an eligible applicant, but under lease to an eligible applicant, are eligible to the extent of the applicant's repair and maintenance responsibility under the lease.

(e) *Roads, streets and bridges serving a rural community or unincorporated town or village.* To be eligible, a road, street, or bridge not owned by a State or local government must meet the following requirements:

(1) It is located in and/or serves an unincorporated community, town, or village; and

(2) It is owned by a private nonprofit organization.

(3) It is available for use by the general public.

(f) *Private nonprofit facilities.* Eligibility criteria for restorative work on eligible facilities owned by eligible private nonprofit organizations are the same as for like work on similar facilities owned by a State or local government. To be eligible, a facility or system not owned by a State or local government must meet the following requirements:

(1) The facilities shall meet the criteria of the definition of private nonprofit facilities [§ 205.71(1)]. They must also be owned and operated by an organization meeting the definition of a private nonprofit organization [§ 205.71(m)].

(2) The restored facility or portion thereof shall be operated and maintained by the grant recipient or successor eligible private nonprofit organization so as to carry out the purposes of the facility and of the owning organization.

(3) The eligible owning organization shall provide the permits and licenses necessary to restore the facility in accordance with the project application and shall agree to continue to operate and maintain the facility throughout its useful life so as to carry out the purposes of the facility and of the owning organization.

(4) Repair or replacement of any hospital or other medical care facility in any disaster-affected area is eligible, only if:

(i) The Regional Director after consulting with the State hospital planning agency, determines that there is not a significant surplus of such facilities, and

(ii) After consulting with the State hospital planning agency, he/she determines that a significant surplus of such facilities would not be created by the proposed work, and

(iii) The facility was in active use prior to the major disaster and was providing significant medical services to the general public.

(5) Repair or replacement of any educational facility in a disaster affected area is eligible only if it would be eligible as a public facility under Pub. L. 81-815, Pub. L. 81-874, or Pub. L. 89-329.

(g) *Facilities under construction.* (1) Except as noted in this section, facilities under construction are subject to the same eligibility criteria as other facilities owned or operated by a eligible applicant. A contractor building such facilities can not claim costs for repairing facilities still under its responsibility at the time of the disaster.

(2) Facilities which were under construction at the time of the disaster and which were the responsibility of the applicant may be eligible for restoration substantially to predisaster condition.

(3) In addition to other provisions of these regulations, the following are not eligible:

(i) Repair or replacement of mobile construction equipment.

(ii) Extra work which exceeds original scope when caused by changed site conditions.

(iii) Increased scope of work for hazard mitigation purposes, although such work may be required as a condition of the grant.

(h) *Flexible Funding.* (1) The eligible cost basis for a flexible funding grant under section 402(f) of the Act shall conform to the following guidelines:

(i) The eligible cost shall be 90 percent of the Federal estimate of permanently repairing, restoring, reconstructing, or replacing all eligible facilities.

(ii) It shall not include the estimate for performing emergency work pursuant to section 305 or 306 of the Act. [Emergency work is covered by a separate categorical grant. See 44 CFR 205.113(b)(1)].

(iii) It shall not include estimates for restoring facilities found ineligible by the Regional Director.

(2) Projects for which a flexible funding grant may be expended shall conform to the following guidelines:

(i) It shall be a capital improvement project of the type which would be eligible for disaster assistance under these regulations if it were damaged by a major disaster.

(ii) It is necessary to perform governmental services or functions in the disaster area designated by the Associate Director.

(iii) The grant shall not be used for operating or maintaining a facility.

(i) *Grants-in-lieu [see § 205.113(b)(1)(iv)].* The work upon which a grant-in-lieu is based is that emergency work eligible under section 305 or 306 of the Act or that restoration work eligible under section 402 needed to restore a facility to its predisaster condition in accordance with current applicable standards.

(1) The work to which the grant-in-lieu is applied may be a larger and/or more elaborate facility or one of a different design.

(2) The new facility must, at a minimum, serve the same purpose or function and have at least the equivalent capacity of the damaged facility.

(3) If a facility of lesser capacity is built, the scope of eligible work and eligible cost will be reduced in the same proportion as the capacities of the two facilities.

(j) *Small project grant [see § 205.113(b)(3)].* The work upon which a small project grant is based is all eligible work, emergency and permanent, in the project application.

(1) The grant may be used to perform some or all of the emergency and permanent work in accordance with the project application; or

(2) It may be used to provide new facilities conforming to the following guidelines:

(i) It shall be a capital improvement project of the type which would be eligible for disaster assistance under these regulations if it were damaged by a major disaster.

(ii) It is necessary to perform governmental services or functions in the disaster area designated by the Associate Director.

(iii) It shall not be used for operating or maintaining a facility.

(k) *Time limitations.* Only that work started and completed or equipment delivered within time limits established by the Regional Director or Associate Director is eligible for FEMA assistance. Refer to § 205.116(b).

§ 205.74 Emergency work.

(a) *General.* (1) Emergency work is eligible under section 305 or 306 of the Act to provide emergency protective measures to save lives, to protect public health and safety, and to protect improved property as the result of a declared major disaster or emergency; under section 306 or 403 for debris removal; under section 415 for Emergency Communications; and under section 416 for Emergency Public Transportation.

(2) When immediately necessary to provide essential community services and emergency work of a lesser scope will not restore the necessary services, permanent restorative work on facilities damaged or destroyed by a major disaster or emergency may be expedited as emergency work under sections 305 or 306 of the Act. Eligibility of such emergency work shall be determined separately from any other permanent restorative work eligible under section 402 of the Act.

(3) In determining whether emergency work is required, the Regional Director may require certification by local, State, or Federal health officials that a threat exists, including indentification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(b) *Debris removal*—(1) *Justification.* In determining whether to approve reimbursement for debris removal the Regional Director shall determine whether the work will:

(i) Eliminate immediate threats to life, public health, and safety; or

(ii) Eliminate an immediate hazard which threatens significant damage to improved public or private property, or

(iii) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(2) *Types of work.* If it is determined that one of the above criteria is met, the following types of debris removal are eligible:

(i) Clearance and removal of debris and wreckage from publicly and privately owned land and waters, except where such clearance and removal is covered by adequate insurance.

(ii) Clearance and removal of debris from Federal Aid System roads unless such work is incidental to repair work being funded under the Emergency Relief Program administered by the Federal Highway Administration.

(iii) *Natural Streams.* Cleanout of debris deposited by the major disaster in a natural stream is eligible only if there is immediate threat of flooding which would damage or destroy improved property. An immediate threat of flooding is that which could reasonably be expected to occur within one year.

(iv) Emergency protective facilities installed under authority of other Federal agencies (OFA) immediately before the disaster or FEMA authority during the disaster will be eligible for removal under the Act when such facilities directly affect the operations of, or access to, public facilities required by the applicant in its normal day to day operation. Such protective facilities which are a threat to lives, public health or safety are also eligible for removal.

(v) *Private Property.* No Federal reimbursement will be made to an eligible applicant for its reimbursement of an individual or private organization for the cost of removing debris from their own property.

(c) *Emergency protective measures*—(1) *Justification.* In determining whether to approve reimbursement for emergency protective measures the Regional Director shall determine if the work will:

(i) Eliminate an immediate threat to life, public health, or safety; or

(ii) Eliminate an immediate hazard which threatens significant damage to improve public or private property at a favorable ratio of benefits to costs.

(2) *Types of work.* If it is determined that one of the above criteria is met the following types of work are eligible.

(i) Search and rescue;

(ii) Emergency medical care;

(iii) Emergency mass care;

(iv) Emergency shelter;

(v) Provision of food, water and other essential needs;

(vi) Construction of temporary facilities for essential community services;

(vii) Demolition and removal of unsafe structures that endanger the public; or

(viii) Reduction of any other immediate threats to life, improved property and public health and safety.

(3) *Other Emergency Work.* In addition to the criteria of paragraph (c)(1) of this section, certain criteria apply to specific types of work as follows:

(i) Emergency work on protective facilities to prevent additional damage to improved property is eligible only when the effects of a declared major disaster or emergency have severely damaged or destroyed the protective facility and further destruction to improved property is threatened by subsequent events. When approved, such emergency work is limited to the essential measures required to protect improved property against similar events which could reasonably be expected to occur within one year, or to restore protection as existed prior to the disaster, whichever level of protection is the lesser. Placement of sand on beaches is also eligible under the guidelines of this paragraph.

(ii) *Landslides.* Permanent stabilization of landslides is not eligible as emergency work. Refer to § 205.75(a)(15). Emergency work necessary as a result of a landslide shall be performed during the incidence period for the major disaster or emergency or immediately afterward. Eligible emergency work to protect lives or property from the effects of a landslide caused by the major disaster or emergency event may include:

(A) Removal of loose slide material where feasible, or

(B) Simple drainage measures or covering of the ground to reduce saturation.

(iii) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant or grantee for repair and maintenance may be eligible for emergency repairs or replacement provided:

(A) The Regional Director determines that emergency repair or replacement of the facility economically eliminates needs for temporary housing because there are no alternative access facilities immediately available within a reasonable distance, and

(B) The necessary emergency work can be provided on a one-time basis and will not obligate the Federal Government to fund further emergency work or maintenance. The work will be limited to that necessary for the access to remain passable after an event which could reasonably be expected to occur within one year.

(iv) *Water control facilities.* Emergency work on water control facilities may be eligible:

(A) During the incident period, whatever reasonable protective measures are necessary to protect against that height of water actually experienced or predicted to occur during that period, or

(B) After the incident period, to restore the protective function which the facility provides for improved property to the level of an event which could reasonably be expected to occur within one year, or the predisaster level, whichever level of protection is lesser, or

(C) The minimum work necessary to ensure the structural integrity of a damaged facility which is eligible for permanent restoration under Pub. L. 93–288 or other Federal authority. This work is also limited to that necessary to protect against an event which could reasonably be expected to occur in one year.

(v) *Ice jams.* The removal of ice jams is not eligible for FEMA assistance.

(vi) *Damage to Private Property.* Damages may occur to private property through the performance of disaster related work by the applicant or by another Federal agency. The repair of these damages is not eligible, whether or not the original work was eligible for FEMA assistance, unless the repairs are necessary to remove an immediate threat to lives, public health or safety or to improved property.

(d) *Emergency communications.* The Regional Director is authorized as the result of an emergency or major disaster to establish emergency communications and make them available to State and local government officials and other personnel as deemed appropriate. Such emergency communications are ordinarily intended for use as necessary to carry out the disaster relief functions. Communications provided under this section are intended to supplement but not replace normal communications that remain operable after a major disaster. These emergency communications will be discontinued immediately when the essential emergency communications needs of FEMA and the community have been met.

(e) *Emergency public transportation.* The Regional Director may provide emergency public transportation in a disaster-affected area to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible. Any transportation provided under this section is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding of such emergency transportation will be discontinued by the Regional Director as soon as the emergency needs have been met.

(f) *Snow Removal Assistance*—(1) *Eligible work.* When approved by the Regional Director under a snow emergency declaration, snow removal from the following types of facilities is eligible:

(i) Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterials.

(ii) Tracks and rights-of-way of urban mass transit systems when necessary for the resumption of urban high volume traffic.

(2) Ineligible work. Snow removal from the following types of facilities is not eligible:

(i) Local roads and streets.

(ii) Other facilities including:

(A) Parking lots (except where needed and used for emergency snow removal operations);

(B) Playgrounds;

(C) Recreational or park facilities;

(D) Airports (except for emergency road access);

(E) Cultural facilities; or

(F) Hospitals and other medical care facilities (except for emergency access).

§ 205.75 Permanent work.

(a) *General*—(1) *Applicability.* Permanent work is eligible under section 402 of the Act and these regulations and includes supplemental assistance to eligible applicants to repair, restore, reconstruct, or replace eligible facilities on the basis of the design of the facilities as they existed immediately prior to the disaster and in conformity with applicable standards. Criteria for determining eligibility of permanent work are the same for categorical, flexible funding, and small project grants.

(2) *Standards.* (i) To be applicable to Federal grant assistance under section 402 or 419 of the Act, standards for repairs or for new construction must have been in writing, formally adopted, enforced, and in general use when the major disaster occurred, except those standards authorized as deviations by the Regional Director or Associate Director. When the Regional Director determines that restoration without a standard or in conformity to existing applicable standards jeopardizes public

health and safety or that the facility could be made less vulnerable to future damage, the applicant will be encouraged to adopt the applicable standard endorsed by the State or by a nationally recognized standard setting body. These standards must be applicable for all similar new or replacement facilities within the applicant's jurisdiction. If a new standard is adopted, the Regional Director may approve it as a deviation and it will be applicable to the replacement of the facility destroyed by the current disaster. If there is no State or national standard applicable to the situation, the Regional Director may request the Associate Director to develop a standard. The Associate Director will then encourage the applicant to adopt the standard with applicability for all similar new or replacement facilities within the applicant's jurisdiction. If the standard is adopted, the Associate Director may approve it as a deviation and it will be applicable to the replacement of the facility destroyed by the current disaster. If the standard is not adopted in either situation, and therefore no standards are applicable, Federal grant assistance for permanent work under the Act shall be limited to restoring the facility to its predisaster condition and predisaster design to the extent practicable. When the application of the suggested standard is necessary to achieve minimization as required by the Floodplain Management Executive Order (E.O. 11988), the standard shall be incorporated into the facility at the applicant's expense as a condition of FEMA assistance.

(ii) When a facility is determined repairable by the Regional Director, standards for new construction are not applicable except in special cases determined by the Regional Director. Standards for repair, if any, would be applicable.

(iii) In approving grant assistance for permanent restoration of damaged or destroyed facilities under the Act, the Regional Director may authorize minor disaster proofing not required by applicable standards. If necessary, more extensive measures may be approved by the Associate Director. See § 205.407(b) for requirements for disaster proofing measures.

(3) *Materials.* For all eligible repairs, replacements, rebuilding or other restorative work, the most economical materials shall be used, taking into consideration the following: Predisaster design and condition of the facility; current applicable standards, if any; and predisaster public services or usage of the facility.

(4) *Repairs.* (i) A facility is considered repairable when:

(A) It is feasible to repair the facility so that it can perform the function for which it was designed as well as it did immediately prior to the disaster; and

(B) Such repairs can be made at a cost less than the estimated cost of replacing the damaged structure on the basis of its design immediately prior to the disaster; and

(C) Such permanent repairs are a practicable alternative under 44 CFR Parts 205, Subpart M, 44 CFR Part 9, and 44 CFR Part 10, when applicable. If not, the Regional Director may authorize emergency repairs under section 306, Pub. L. 93–288, to restore essential public services and shall then decline to approve any permanent restorative work in accordance with the appropriate part(s) referenced in this paragraph.

(ii) If the facility was in a damaged or unsafe condition prior to the major disaster, the applicant shall agree to pay the cost of correcting any such conditions as a prerequisite to Federal assistance.

(5) *Replacement.* If a damage facility is not repairable to predisaster condition as determined by the Regional Director, approved restorative work shall include replacement of the facility on the basis of its predisaster design, in conformity with applicable standards for new construction.

(6) *Feasibility studies.* In those cases where the decision to repair or to replace the damaged facility depends upon the relationship between repair costs and replacement costs, the Regional Director will determine the need for a feasibility study. Landslide area investigations may also be eligible [see § 205.75(a)(15).]

(7) *Relocation/No Action.* The Regional Director may decline to approve funding for permanent restoration of a facility at the original location when:

(i) The facility is and will be subject to repetitive heavy damage.

(ii) The approval is barred by provisions of 44 CFR Part ((Floodplain Management), 44 CFR Part 10 (Environmental Considerations), 44 CFR Part 205 Subpart M (Hazard Mitigation) or Subpart N (Coastal Barrier Resources Act).

(iii) If funding at the original location is denied, the applicant may choose among the following:

(A) A grant-in-lieu maybe requested to apply the eligible repair or replacement costs, as applicable, to the reconstruction of the facility at a non-hazardous site. The purchase of the site and road and utility services to the site are the responsibility of the applicant.

(B) The estimated restoration costs may be included in a flexible funding grant provided that no part of the grant is used on the facility at the disapproved location.

(C) The estimated restoration costs may be included in a small project grant provided that no part of the grant is used on the facility at the disapproved location.

(iv) When FEMA funding is denied at a hazardous location, no future FEMA funding may be approved to repair a facility providing the same function as the originally denied facility at the location unless the hazard is mitigated.

(8) *Limited use facilities.* If a facility was not being used to its full capacity or was being used for other purposes than originally designed, assistance may be restricted. Restoration will only be eligible to the extent necessary to restore the immediate predisaster capacity for the limited use or the alternate purpose.

(9) *Inactive facilities.* Facilities that were not in active use at the time of occurrence of the major disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

(10) *Facilities scheduled to be replaced.* If a facility which is damaged by a major disaster or emergency was scheduled, prior to the disaster, for replacement within the fiscal year in which the disaster occurred or the next fiscal year, it is not eligible for permanent restoration assistance. Emergency work associated with the project may be eligible.

(11) *Nonessential features.* Although constructed and maintained by the applicant, non-functional features of a facility only of aesthetic value are not eligible.

(12) *Furnishings and equipment.* Comparable used or surplus furnishings and equipment will be approved as replacement items when available. Only those functional furnishings and equipment essential to the operation of the facility are eligible.

(13) *Consumable supplies.* Consumable supplies damaged or lost in a disaster are eligible for replacement but limited to a 30-day requirement of each item replaced. However, the Regional Director may approve additional requirements for certain

items for which he determines that minimum economical stockage levels exceed 30 days.

(14) *Grass Areas.* When such work is necessary in conjunction with eligible permanent restoration of a facility or structure or to retard erosion, grass areas may be restored by:

(i) *Seeding.* Application of seed, fertilizer and mulch in accordance with local practices;

(ii) *Sodding.* Placement of sod when such is the local standard of the applicant. Seeding shall be substituted whenever feasible.

(iii) The maintenance of seeded or sodded areas after initial installation shall be the complete responsibility of the applicant.

(15) *Landslides.* A facility damaged be earth movement shall by reviewed for eligibility in accordance with applicable sections of this regulation. For eligible facilities, additional work may be necessary:

(i) If the stability of the site is in question, the Regional Director may approve reimbursement for a feasibility study by the applicant in order to determine the stability of the site and the practicability of restoring the facility at the site. The study must be cost effective when the cost of the study is compared to eligible repair costs for the facility [see § 205.76(e)(2)].

(ii) If the site is found to be stable to the satisfaction of the Regional Director, he/she may approve the most cost effective method of restoring the facility to perform its predisaster function. Such facility restoration will include the replacement of lost fill (natural and manmade) and the construction of fill retaining devices such as gabions, rock toes, cribwalls, binwalls, posts and sheathing, etc. to the extent necessary.

(iii) If the site is found to be unstable, it must be stabilized before approval for the permanent restoration will be granted. The design and installation of the stabilization are not eligible for FEMA assistance unless the applicant has an applicable standard in accordance with § 205.75(a)(2)(i). The extent of eligible stabilization will be limited to that necessary to restore the eligible facility.

(iv) If there is no practicable method to stabilize the site, or if the applicant declines to perform the stabilization at its own expense, the Regional Director shall deny assistance for the permanent restoration of facilities. In such situations, emergency work to restore essential community services may be eligible.

(b) *Road and street facilities and systems.* Functional features within the public right of way which are damaged by the major disaster or emergency are eligible. These features include, but are not limited to, pavement, base and subbase of the traveled way, shoulders, embankments, bridges, culverts, drainage structures and safety related items. Facilities that are part of the Federal-Aid System as administered by the Federal Highway Administration (FHWA) are not eligible for FEMA permanent restoration assistance.

(1) *Roads.* Surfaced or paved roads where surface material has been damaged or removed as a result of the disaster may be eligible for restoration but only to predisaster condition. The following are not eligible:

(i) Repair of damages resulting from a lack of maintenance, or which are maintenance in nature and scope.

(ii) Repair of damages resulting from freeze-thaw cycles in areas which normally experience freezing temperatures.

(iii) Repair of roads which have no added surface material (gravel, caliche, etc.) incorporated into their construction. Such roads may be eligible for emergency work to make them passable.

(2) *Detours.* Repair of damages to a road, street or bridge as a result of its use as a detour may be eligible provided:

(i) The detour was made necessary by a facility owned by this or another eligible applicant being out of service as a result of the major disaster.

(ii) Such detour is only operated as long as absolutely necessary and the primary facility is returned to service as soon as possible.

(3) *Bridges.* A structure which meets the definition of a bridge may be eligible for repair or replacement whichever is applicable. Repairability shall be determined by the Regional Director in accordance with § 205.75(a)(4).

(i) *Width standards.* Bridges which are eligible for replacement may be restored in accordance with current applicable local standards for bridge widths. If no such standards are adopted and in force; or if the local standard does not equal or exceed the FEMA bridge width standard, the Regional Director will encourage the applicant to adopt the FEMA standard for all new or replacement bridges within the applicant's jurisdiction. If the FEMA standard is adopted by the applicant, the Regional Director will approve the standard as a deviation and it will be applicable to the replacement of the bridge destroyed by the current disaster. If the standard is not adopted, only the cost of an in-kind replacement would be eligible for FEMA assistance. The FEMA standard appears in the FEMA Eligibility Handbook (DR&R–2—July 1981) and may be superseded by changes approved by the Associate Director.

(ii) *Waterway opening standards.* If the applicant has an applicable standard relating to waterway openings, and the bridge is eligible for replacement, the cost of building to that standard may be included in eligible costs. In all cases the action will be reviewed for compliance with Floodplain Management regulations, 44 CFR Part 9. Based upon that review FEMA may specify a waterway opening for the bridge and encourage the applicant to adopt the standard of having waterway openings which will accommodate the 100 year frequency flood through, over and around the bridge without significant adverse effects for all new or replacement bridges within the applicant's jurisdiction.

(iii) When, in the replacement of a bridge, the roadway can be brought into a safer alignment by skewing the bridge, the work is eligible for FEMA reimbursement. Approval shall be conditioned on the applicant funding the necessary changes to existing undamaged approach roads. Such relocated approach roads shall conform at least to the minimum standards outlined in Chapter 5 of the American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets, 1984.

(iv) *Repairable bridges.* Only restoration of those features which existed on a repairable bridge prior to the disaster are eligible for FEMA reimbursement.

(v) *Traffic standards.* Determination of predisaster capacity for handling traffic on bridges and roads damaged or destroyed as a result of a major disaster shall be based on the average daily traffic which the bridge or road carried immediately prior to the disaster.

(4) *Culverts.* Standards for the replacement of bridges shall not be used in the repair or replacement of culverts. Applicable local standards for the repair or replacement of culverts may be eligible.

(i) If a culvert is merely plugged, there is no damage to the culvert or its installation and it may be cleaned in place without removal; such cleaning is routine maintenance and is not eligible. However, if the culvert pipe must be removed from its installation to be cleaned, such work is eligible.

(ii) Culverts which are washed out and cannot be reused may be replaced by larger culverts if required by applicable standards or if damage was

due to inadequate capacity and upgrading can be completed within disasterproofing guidelines. If all or part of the culvert pipe assembly is salvageable, it shall be reused.

(iii) The fill over the culvert and the roadway surface are eligible for restoration to predisaster design and condition.

(c) *Water Control Facilities.* Restoration of water control facilities may be eligible for FEMA assistance including but not limited to: Dams, levees, dikes, open drainage channels, irrigation systems and debris dams.

(1) *U.S. Army Corps of Engineers (COE) Projects.* Restoration of flood control works originally constructed by the U.S. Army Corps of Engineers (COE) or incorporated into authorized projects is the responsibility of the COE and is not eligible for FEMA assistance. Denial of permanent restoration assistance by COE is not reason for FEMA eligibility. Emergency work, if done by the applicant on these facilities, is not eligible for COE reimbursement but may be eligible for FEMA assistance as Category B emergency work. A separate eligibility determination for such assistance shall be made in accordance with § 205.74(c)(3)(iv).

(2) *Other Projects.* Restoration of other flood control works may be eligible for FEMA assistance but only to predisaster condition, profile and cross section. Applicable local standards, if being used currently, may be incorporated into the eligible work. A review of the project for compliance with 44 CFR Part 9, Floodplain Management, will be required and any local standard will be reviewed for adequacy of the level of protection afforded by the project. This review may result in a recommendation by FEMA to adopt a new standard if the local standard is found inadequate [see § 205.75(a)(2)].

(3) *Debris dams, etc.* Restoration of the constructed dam portion of a debris catch basin may be eligible for assistance provided the conditions of (5) below are met. Cleanout of debris catch basins shall be limited to the removal of materials deposited by the disaster. The applicant will be required to show satisfactory evidence of the predisaster level of debris or no cleanout will be eligible. The applicant will also be required to show evidence of adherence to an established maintenance program of regular cleanouts. If no such program is being followed, no cleanout will be eligible. Debris basins which were constructed as an emergency protective measure in the past and for which there is no longer an emergency need are not eligible for cleanout or restoration assistance. An exception may be made if it can be shown that the basin continued to provide significant protection after the initial emergency and the basin was maintained by regularly scheduled cleanouts.

(4) *Drainage Channels and Reservoirs.* Restoration of a reservior dam or drainage channel walls or dikes may be eligible for assistance provided the conditions of paragraph (c)(5) of this section are met. Cleanout of debris deposited by the major disaster in a designed, constructed and regularly maintained channels, or water supply reservoirs, is eligible. It shall be the responsibility of the applicant to show the disaster related debris. The applicant will also be required to show evidence of adherence to an established maintenance program which is designed to maintain the flow or storage capacity of the facility.

(5) *Maintenance.* In those cases where inadequate maintenance by the applicant prior to a major disaster significantly diminished the predisaster design or hydraulic capacity of a facility or system, the Regional Director may require the applicant to correct the maintenance deficiencies of the entire facility or system as a condition for Federal grant approval for permanent facility work. The approval will be limited to restoration of the design and condition of the facility or system as it existed immediately prior to the major disaster. The applicant shall submit an acceptable plan and schedule for the required maintenance work acceptable to the Regional Director before project approval. If these conditions are not satisfied, the Regional Director may decline to approve Federal assistance.

(d) *Buildings and Equipment.* All publiciy owned or operated buildings and equipment are generally eligible provided they meet the other eligibility criteria of these regulations. Eligible private nonprofit buildings and equipment are further limited to those which meet the special criteria in § 205.73(f).

(1) *Repairs.* When a building remains structurally sound such that repairs are feasible, then the eligible work is limited to performing those repairs in accordance with applicable standards for repairs.

(2) *Replacements.* When a publicly-owned building is destroyed or damaged to the extent that the Regional Director determines that it would not be feasible to perform repairs, a replacement structure may be authorized. The eligible capacity of the replacement facility may not exceed the designed capacity of the original structure.

(3) *Educational Facilities.* Assistance is not available for public or private nonprofit educational facilities unless the cost of the total of damages, including those covered by insurance, from the disaster within the school district exceeds the threshold in effect for assistance to elementary and secondary schools from the Department of Education at the time of the disaster. For purposes of determining if the dollar threshold is met, total eligible damages will be counted including those eligible for Department of Education and FEMA program assistance.

(4) *Office equipment.* When damage to office equipment is repairable, only repair is authorized. When damage is not repairable, comparable used office equipment when available from Federal and State surplus or commercially, shall be procured for replacement items. Only when used equipment is not available will new equipment be approved.

(5) *Service equipment.* Damages to police cars and motorcycles, fire trucks, public works construction and maintenance equipment, and such other equipment damaged as a direct result of the disaster are eligible. This includes damages that could not have been reasonably avoided and which are incurred while performing eligible work. Reimbursement for such equipment is covered at § 205.76(b)(3)(iii). To be eligible equipment must have been in active use or only temporarily out of service:

(i) *Repairs.* Only those repairs necessary to return service equipment to a safe operable condition are eligible. The allowable reimbursement will not exceed the actual cost of repairs less any insurance recoveries.

(ii) *Replacement.* If the equipment is not repairable to a safe operable conditions or if repair costs will exceed "Blue Book" retail value, the equipment will normally be replaced with used equipment of approximately the same age and value to the extent such equipment is readily available within a reasonable time and distance. Salvage value, if any, and insurance recoveries shall be deducted from the allowable reimbursement.

(6) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. When damage to books is repairable, only repair is authorized. Federal grant assistance shall be based on used replacements, when reasonably comparable and available. Discounts from list price normally are available and must be used when available. The

Regional Director may authorize equivalent replacement, such as substituting microfilm copies of newspapers and periodicals, if they can be provided at no greater Federal cost than replacement of the damaged items in kind. Cataloging and other work incidental to replacement of books and other materials are eligible.

(e) *Utilities.* Repair or replacement of utility generation, transmission and distribution facilities are eligible under the following guidelines:

(1) Repair or replacement of measuring devices such as meters is eligible only if the maintenance and repair responsibility is that of the applicant.

(2) Cleaning of storm and sanitary sewer lines of debris is eligible only to remove debris deposited by the disaster and only if the capacity of the sewer is affected. The level of predisaster debris shall be documented by the applicant and shall be subtracted from the total amount of debris to determine eligible work.

(3) A State or Federal requirement for a higher level of sewage or water treatment than existed before the disaster shall not be treated as an applicable standard to be used for restoration or replacement of a water or sewage treatment plant. That would be a requirement for a different facility to which a grant-in-lieu could be applied.

(f) *Parks and Recreational Facilities.* Publicly owned park and recreational facilities may be eligible for restoration under this category.

(1) Physical installations in the area such as playgrounds and equipment, swimming pools, boat docks, bath houses, tennis courts, picnic tables, etc. may be repaired or replaced in accordance with the general criteria for permanent work.

(2) Natural features of a publicly-owned park or recreational facility, such as trees and shrubs may be replaced to the extent necessary to restore public services or use that the Regional Director determines to be reasonable and practicable.

(3) Trees in areas other than parks such as around public buildings or along a public boulevard, may be considered a part of the public facility only if they serve in a functional relationship to the facility. These functions may include shade, screening, privacy control, noise abatement, traffic control, glare and reflection control, wind protection and erosion control. Trees for ornamental purposes only are not eligible.

(i) The above functions must relate to a specific eligible public facility. Wooded areas which are not functionally related to a specific facility are not eligible for restoration.

(ii) For those trees which the Regional Director determines that restoration may be eligible, the applicant must have demonstrated by actual practice prior to the disaster that it is responsible for planting, maintaining and replacing these trees.

(4) Large mature trees which have been destroyed will be replaced with a tree no larger than "five gallon" size. Small trees will be replaced with seedlings on a one-for-one basis. If feasible, repairs such as straightening trees or trimming broken branches, shall be performed on damaged trees. The cost of repairs should not exceed the cost of removal and replacement of the tree.

(5) *Beaches.* Replacement of sand on a natural unimproved beach is not eligible except when necessary as emergency work to protect improved property. Work on an improved beach may be eligible under the followng guidelines:

(i) The beach was constructed by the placement of sand to a designed elevation and width.

(ii) A maintenance program involving periodic renourishment of sand has been established and adhered to by the applicant. Any beach that has not been renourished within the five years prior to the disaster or the prescribed renourishment interval, whichever is less, will not longer be considered an improved beach.

(iii) The applicant will be responsible for the replacement of sand lost by normal erosion between the time of the last replacement and the disaster event at its own expense. Such replacement will be a condition of FEMA assistance for replacement of the sand lost because of the disaster.

(iv) Repair of damaged existing sand retention devices such as groins or breakwaters is eligible.

(v) FEMA assistance on improved beaches must be determined to be a practicable alternative in accordance with floodplain management regulations (44 CFR Part 9). Particular attention must be paid to the effect of the work on adjacent areas and vice-versa.

(g) *Removal of timber.* When in the public interest, the Regional Director may approve grants to a State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster. When approved by the Regional Director, bent, twisted, or downed timber of commercial value will be salvaged or cleared. This includes the construction of approved temporary access roads required for removal of the damaged timber. Disposal of slash created by approved timber removal is eligible when reasonable methods are employed.

§ 205.76 Eligibility of costs.

(a) *General.* (1) This section provides policies and guidelines for determining eligibility of costs of work eligible under the Act that may be paid to any eligible applicant or other recipient of this grant assistance. As used in this section, eligible costs include total costs that are subject to cost sharing and are otherwise reimbursable under these regulations. The applicable cost sharing portions as set forth in Subpart H, § 205.113(b) shall be used to determine net eligible costs which may be approved and reimbursed by FEMA. The subparagraphs which follow are generally applicable to eligibility of costs. Only reasonable costs of eligible work are reimbursable.

(2) Factors affecting eligibility of costs. To be eligible under a FEMA grant, costs must meet the following general criteria:

(i) Be necessary and reasonable for proper and efficient administration of the grant program, be allocable to approved work under these regulations, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the applicant.

(ii) Be authorized or not prohibited under State or local laws or regulations.

(iii) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(iv) Be consistent with policies, regulations, and procedures of the applicant that apply uniformly to both Federally assisted and other activities of the unit of government of which the grantee is a part.

(v) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(vi) Not be allocable to or included as a cost of any other Federally financed program.

(vii) Be net of all applicable credits which offset or reduce eligible disaster costs. Examples are purchase discounts, insurance recoveries and salvage.

(3) The amount of Federal reimbursement made to an applicant under categorical funding is limited to applicable portion [§ 205.113(b)] of the eligible cost of performing work approved by FEMA. This limitation is not intended to restrict the type and cost of work which the applicant may choose to undertake. If the applicant performs

work in excess of the approved amount, Federal financial assistance is limited to the applicable portion of eligible costs of work approved by the Regional Director. Flexible funding under section 402(f) of the Act, is limited to 90 percent of the applicable portion of the estimated costs of eligible permanent restorative work. (Emergency work would be covered by a categorical grant with the limits described above). Reimbursement under a small project grant is limited to the applicable portion of the estimated cost of all eligible work.

(4) The applicant may use assistance under the Act to supplement funds available from the grant programs of other Federal agencies, or from other sources, provided that:

(i) There is no duplication of benefits prohibited by section 315 of the Act, or

(ii) Such funding is not in violation of applicable laws and Federal regulations governing such other Federal programs.

(5) *Administrative Expenses.* An allowance to cover expenses attributable to requesting, obtaining, and administering FEMA grant assistance is an eligible cost.

(i) The allowance shall be calculated in accordance with the following:

(A) For those applicants whose total eligible costs are less than $100,000, such allowance shall be three percent of total eligible costs (estimated costs for recipients of small project grants).

(B) For those applicants whose total eligible costs exceed $100,000 but are less than $1,000,000, such allowance shall be $3,000 plus two percent of total eligible costs in excess of $100,000.

(C) For those applicants whose total eligible costs exceed $1,000,000 but are less than $5,000,000, such allowance shall be $21,000 plus one percent of total eligible costs in excess of $1,000,000.

(D) For those applicants whose total eligible costs exceed $5,000,000 such allowance shall be $61,000 plus one-half percent of total eligible costs in excess of $5,000,000.

(ii) Subject to the limitations stated in paragraph (a)(5)(i) of this section, the allowance for administrative expenses will cover, but is not limited to, the types of work listed below. These costs will be covered only by this allowance and will not be included as part of the cost of any eligible work project. The amount approved will be only the applicable percentage of total eligible costs and will not be based on the actual cost of the administrative items.

(A) Preparation of project applications, reports, appeals, inspection reports, materials for audits, and claims for payment.

(B) Operation of Emergency Operations Center.

(C) Salaries, wages, fees, and expenses of individuals or firms while engaged in the preparation and processing of damage assessments, damage survey reports, project applications, claims for payment and supporting documentation.

(D) Office supplies and equipment.

(E) Rent.

(F) Telephone and telegraph expenses.

(G) Insurance purchased by the applicant or grantee for its protection during the use of the grant or loan.

(H) Insurance requried to be purchased as a condition of FEMA assistance.

(6) *Equipment rental.* Rental of privately-owned equipment to perform eligible disaster work is eligible. However, the rental rates must be comparable to going rates in the locality for similar types of equipment. If not, reasonable rates as determined by the Regional Director shall be substituted in approval of project applications and of claims.

(7) *State Inspectors.* Reasonable actual costs, as determined by FEMA, of State inspectors, representing the Governor's Authorized Representative (GAR), engaged in preparation of Damage Survey Reports (DSRs) and Final Inspection Reports and related field inspections, are eligible. This does not include persons acting as representatives of State agencies that are applicants. These costs are subject to the following limitation: reimbursement may be made for travel, per diem, and overtime, but not regular time salaries. The Regional Director, after consultation with the GAR, will determine the appropriate schedules for preparation of DSRs and Final Inspection Reports.

(8) *Handtools, materials, and supplies.* The following items are eligible:

(i) Reasonable costs for materials and supplies consumed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.

(ii) Costs of hand tools (shovels, handsaws, hammers, etc.), personal equipment (radios, weapons, etc.), and protective clothing reasonably lost, worn out or destroyed through disaster use in performing eligible work if determined not to be the result of negligence.

(9) *Salvage.* Salvage value of any damaged or destroyed property must be deducted in all determinations of eligibility of cost and from final reimbursement to any claimant.

(10) *Stockpiled items.* Costs of all stockpiled items purchased under the Contributions Program (Pub. L. 81-920) for civil defense purposes which are lost, damaged, or destroyed by a major disaster while in storage are not eligible.

(11) *Insurance.* The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds received by the grantee or by the amount of insurance proceeds which would have been received from an insurance policy required to be purchased as a result of prior Federal disaster assistance received under this Act or any other applicable authority. The latter reduction shall be made whether or not insurance was actually purchased or maintained. (See § 205.76(a)(25) concerning costs of obtaining such recoveries.)

(12) Acquisition of lands, easements, and rights-of-way is normally the responsibility of the applicant or other grant recipient. The Associate Director may approve such an acquisition only if it will result in cost savings to the Federal Government.

(13) *Licenses.* The costs of Federal, State, or local licenses which are required for the grantee to operate and maintain completed facilities are not eligible. Meeting the requirements for licenses is the responsibility of the grantee.

(14) *Permits.* The costs of Federal, State, or local permits which are required to perform eligible work are eligible.

(15) *Loss of revenue.* Replacement of revenues lost as the result of major disaster or emergency is not eligible for grant assistance.

(16) *Excess utility costs.* Any added operating costs or charges for providing utility services are not eligible.

(17) *National Guard.* Actual costs paid by the State for eligible work performed by the National Guard including salaries and travel and living expenses of Guardsmen directly engaged in eligible work or in direct supervision of such work are eligible. Eligible work includes public safety or security measures as well as emergency or permanent restoration work eligible under these regulations.

(18) *Cooperative agreements.*—(i) *Eligible.* Costs for work performed under cooperative arrangements between State or local governments, but limited to those direct costs of the performing entity which the applicant is legally obligated to pay and which would be eligible if the applicant had performed the work.

(ii) *Not eligible.* Costs for work performed under arrangement between a State or political subdivision of a State and a Federal agency, except when

approved in advance by the Regional Director.

(19) Work performed by service, fraternal, and other similar organizations which do not normally contract their service for disaster relief.

(i) *Eligible.* Only out-of-pocket costs for equipment, materials, and supplies used or consumed in the performance of eligible work.

(ii) *Not eligible.* Wages or salaries of member personnel engaged in disaster relief activities.

(20) *Prison Labor.* The following costs are eligible:

(i) Jail and prison labor, limited to the amount paid in accordance with rates established prior to the disaster,

(ii) Transportation to work site,

(iii) To the extent which they exceed normally budgeted amounts:

(A) Food and lodging for prisoners and guards,

(B) Salaries of guards subject to limitations on Force Account work.

(21) *Negligence.* No Federal reimbursement shall be made to any applicant for damages caused by its own negligence. Reimbursement may be made to applicants whose damages were caused by other parties, but in such circumstances it will be incumbent upon such applicants to take whatever steps are necessary to recover from the other parties the costs of responding to damages which were caused by the other parties. Any recoveries from such other parties which duplicate assistance provided pursuant to the Act must be returned to FEMA. See also §§ 205.39(f)(3) and 205.76(a)(25).

(22) *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith are not eligible. Interest penalties paid to contractors or suppliers are not eligible costs.

(23) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive or a political subdivision are considered a cost of general State or local government and are not eligible.

(24) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are not eligible.

(25) *Legal Expenses.* Legal fees required in the normal administration of the grant are eligible. However, legal services furnished by the Chief legal officer of a State or local government or of his/her staff solely for the purpose of discharging his/her general responsibilities as a legal officer are not eligible. These regulations provide that eligible costs shall be determined after subtracting any recoveries from eligible damages (§§ 205.76(a)(2)(vii) and 205.76(a)(11)). Reasonable costs of prosecuting claims against persons or entities responsible for causing or aggravating an applicant's emergency or major disaster damages or against persons or entities which have an obligation to reimburse applicants for their emergency or major disaster damages are deductible from the recovery whenever any recovery from such person or entity duplicates all, or any part of, a grant made by FEMA pursuant to the Act. The calculation of applicable expenses, net recovery, and eligible costs will be made in the following manner.

(i) If the recovery is equal to or less than the total damages eligible for FEMA assistance, then all reasonable expenses may be deducted from the recovery to determine the net recovery.

(ii) If the recovery is greater than the total damages eligible for FEMA assistance, then the total reasonable expenses shall be multiplied by the fraction of eligible damages over total recovery to determine applicable expenses. The applicable expenses are then deducted from the portion of the recovery which duplicates the eligible damages. The result is the net recovery.

(iii) The cost of claims against the Federal Government shall not be included in the deduction.

(iv) The net recovery determined in paragraph (a)(25) (i) and (ii) of this section shall be subtracted from total eligible damages to determine cost eligible for FEMA assistance. Reimbursement will be calculated in accordance with § 205.76(a)(3) and 205.113(b).

(26) *Grant-in-lieu.* (i) The amount for which a grant-in-lieu will be approved is limited to the net eligible costs of repairing or replacing the damaged or destroyed facility in accordance with applicable standards.

(ii) The only permissible basis for increasing or reducing the Federal funding under a grant-in-lieu is a substantial error or omission in defining the approved scope of eligible work or in the approved estimated reasonable costs of such work.

(iii) If the actual eligible costs for completing the alternate project are less than the estimate for restoring the original project, the Federal contribution will be reduced, based on the actual eligible costs.

(27) *Direct Federal Assistance (Except technical assistance).* Any applicant which requests and receives direct Federal assistance for eligible work shall reimburse FEMA for the applicable non-Federal portion of the eligible costs incurred for work performed including any overhead or administrative expenses paid by FEMA to the Federal agency performing the mission assignment.

(b) *Force Account (Work by the applicant's own forces).* In addition to the general criteria, the following criteria are applicable to force account work:

(1) *Regular employees.* Gross salaries or wages (including overtime) of regular employees of the applicant or grantee performing eligible work are eligible but not to exceed the going wage paid locally for such work. The following also applies to these personnel costs:

(i) Regular time salaries or wages of regularly employed policemen and firemen and of other regular employees whose duties do not change because of the disaster are not eligible. Examples are levee patrollers, pumping plant operators and building inspectors.

(ii) Regular salaries of supervisory personnel other than working foremen engaged primarily and continuously in field supervision of eligible work are not eligible.

(iii) Fringe benefits for each regular employee are eligible to the extent that such benefits were being paid prior to the disaster. Those benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave and the like, if they are provided pursuant to an approved leave system are eligible. Benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance pension plans, severance pay, and the like, provided such benefits are granted under approved plans are also eligible.

(2) *Extra employees.* Gross salaries or wages (including overtime) of extra employees of the applicant or grantee performing eligible work are eligible when the employees are engaged in the performance of eligible work, but not to exceed the going wage paid locally for such work. All fringe benefits (as listed in paragraph (b)(1)(iii) of this section) actually paid or charged are eligible to the extent that such benefits are normally paid or charged for extra temporary employees of the applicant or grantee.

(3) *Equipment.* The FEMA Schedule of Equipment Rates, or an alternative Schedule of Equipment Rates approved

by the Associate Director, is applicable to all reimbursements for equipment that is publicly-owned or owned by other grantees except as noted here.

(i) The rates are applicable only while the equipment is in actual operation. Standby equipment costs are not eligible.

(ii) For vehicles or equipment utilized by police, firemen, and other employees whose duties do not change because of the major disaster or emergency; and for permanently installed fixed equipment, such as pumping stations, only disaster-related actual costs in excess of average costs are eligible. Average costs shall be calculated by using a like duration of time, or the closest duration for which auditable records are available, for the most recent three years in which Presidentially declared major disasters did not occur.

(iii) *Damaged Equipment.* Equipment which is damaged while performing eligible work may be eligible for repair or replacement [§ 205.75(d)(5)]. If such damage is eligible, only actual out of pocket costs incurred (instead of the FEMA equipment rate) while that piece of equipment was in operation will be eligible in addition to the repair or replacement costs.

(c) *Contract work.* (1) Eligibile; Reasonable costs for work performed by private contractors on eligible projects contracted for in accordance with State or local statutes.

(2) Not eligible; Costs incurred under the following types of contracts unless the Regional Director determines, on a case-by-case basis, that reimbursement of reasonable actual costs of eligible work is in the best interests of the government:

(i) Cost-plus-percentage-of-cost contracts.

(ii) Contracts containing a provision which makes payment for eligible work contingent upon reimbursement under the Act.

(iii) Contracts with any contractor included on the General Services Administration (GSA) List of Debarred, Suspended or Ineligible Contractors.

(d) *Emergency work.*—(1) *General.* In addition to provisions of 44 CFR 205.76, (a), (b) and (c), these specific criteria apply to emergency work under the Act.

(2) *Engineering and design.* For emergency work such services are usually not necessary and must be specifically approved by the Regional Director. The provisions of 44 CFR 205.76(e)(1) are also applicable to any engineering or design services related to emergency work.

(3) *Snow removal.* (i) The following types of costs may be eligible when approved by the Regional Director:

(A) Costs of equipment operations to perform eligible emergency snow removal.

(B) Costs to remove stalled or abandoned vehicles and other obstructions when necessary to accomplish eligible emergency snow removal by equipment operations.

(C) Costs of mobilization and demobilization of equipment actually used to perform eligible work, involving transportation less than 300 miles one way.

(ii) The following types of costs of emergency snow removal are not eligible:

(A) Costs of hand labor.

(B) Cost of salt, sand, and other such antislip measures.

(C) Cost of transportation in excess of 300 miles one way for mobilization or demobilization of equipment.

(4) *Emergency pumping.* Removal of trapped water posing an immediate threat to public health and safety is eligible. Reimbursement for emergency pumping from a flood storage area shall terminate promptly after the river or stream has crested and protection from the one-year storm has been provided.

(5) *Access to water control facilities.* Emergency repairs to roadways along the top of a water control facility shall not exceed that required to provide access for emergency work.

(6) *Vector control.* Only disaster-related actual costs in excess of the average cost for a like duration of time, or the closest duration for which auditable records are available, for the most recent three years in which a Presidentially declared major disaster did not occur.

(e) *Permanent work.* In addition to provisions of 44 CFR 205.76 (a), (b), and (c), these specific criteria apply to permanent work under section 402 of the Act.

(1) *Engineering and design.* Reimbursement for eligible engineering, planning, design, supervision, or inspection services shall be based upon reasonable actual direct costs. For estimating purposes only, FEMA will approve engineering fees on the basis of a percentage of project construction cost. However, applicants may not contract for architect/engineers' services on the basis of a percentage of project construction cost, nor make compensation on such basis. A contract on the basis of actual architect/engineer costs plus a fixed fee will be acceptable. The Regional Director may approve special services, such as engineering surveys, soil investigations, resident engineers, and additional construction inspection.

(2) *Feasibility studies.* Feasibility studies concerning repair vs replacement of a facility or stability of the project site may be reimbursable when approved in advance by the Regional Director. Costs for feasibility studies primarily concerning alternate facilities, betterments, or post-disaster programs or any project approved for flexible funding are not eligible for reimbursement.

(3) *Environmental review.* Costs of performing an environmental review or assessment or portions thereof when required by State statute or requested by FEMA are eligible. The scope of the review shall be approved in advance by the Regional Director.

(4) *Relocations.* When the Regional Director requires the relocation of a facility under § 205.75(a)(7) of these regulations, the costs of restoring the facility at the new location are eligible except for the costs of acquiring the site and costs of provision of road access, utilities and communication lines to the site. If the applicant elects to relocate a facility when not required to do so by FEMA, eligible costs are limited to eligible costs of restoring the facility at the original location.

(5) *Warranties.* Additional costs to provide warranty or guarantee of any repaired items or facilities are not eligible for Federal reimbursement.

(6) *Disaster proofing.* The eligible costs of disaster proofing are limited to minor measures to make the affected features of a facility or structure disaster-resistant. Eligible costs of disaster proofing shall not exceed a small percentage of otherwise eligible costs of restorative work being disaster proofed, unless approved by the Associate Director under unusual circumstances on a case-by-case basis.

(7) *Projects under construction.* Federal reimbursement shall not exceed the net eligible costs to an eligible applicant in restoring a facility to substantially the same condition as existed prior to the major disaster. In addition to other provisions of 44 CFR 205.76, the following are applicable:

(i) Losses to facilities or equipment which were the responsibility of a contractor involved in the construction of the facility are not eligible.

(ii) Losses to a facility which was under construction at the time of the disaster may be eligible only to the extent that a written contract between the applicant and the contractor(s) assigns such responsibility to the applicant.

(8) *Removal of Timber.* The eligible costs for timber removal shall include reasonable actual costs incurred for

removal or disposal of damaged timber, including cost of construction and repair of temporary access roads. These costs shall be reduced by the actual salvage value received for the timber removed or the estimated salvage value of timber that the claimant chooses to dispose of by one of the approved methods. Any insurance recoveries shall also be subtracted from calculated costs.

Dated: April 4, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-8477 Filed 4-17-86; 8:45 am]

BILLING CODE 6718-02-M

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44 CFR Part 205

Disaster Assistance; Subpart H—Public Assistance Project Administration

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart provides guidance for the administration of Federal disaster assistance for State and local governments and qualifying private nonprofit institutions under the Disaster Relief Act of 1974, Pub. L. 93-288, as amended. It describes new procedures to be used by grantees and recipients of assistance in obtaining Federal disaster relief for governmental entities and eligible private nonprofit facilities. The most significant aspects of the proposed rule change would be the establishment of new procedures to be followed in:

(1) Implementing cost sharing requirements and;

(2) processing project applications, claims for reimbursement, appeals, and requests for direct Federal assistance.

DATE: Comment due date: June 17, 1986.

ADDRESSES: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Bruce Baughman, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW, Washington, DC 20472, Telephone (202) 646-3689.

SUPPLEMENTARY INFORMATION: This proposed rule would include the interim rule changes published by FEMA at 50 FR 32062 on August 8, 1985. FEMA published that interim rule to implement the Single Audit Act of 1984, Pub. L. 98-502. When FEMA published the interim rule on August 8, 1985, it did not invite public comment because it was contemplated that a more comprehensive revision of Subpart H, Project Administration, would be published in the near future. It is in the context of this publication that FEMA is proposing a comprehensive revision of Subpart H, one portion of which is the changes to implement the Single Audit Act of 1984. This portion of proposed Subpart H would remove the requirement for State audits on all categorical and flexible funding grants made under section 402 of Pub. L. 93-288, the Disaster Relief Act of 1974. The balance of the proposed comprehensive revision to Supart H would establish procedures to be followed in implementing cost sharing requirements and in the processing of project applications, claims for reimbursement, appeals, and requests for direct Federal assistance. Highlights of the proposed changes are as follows:

Section 205.111 has been revised to delete the definitions of "Applicant", "Emergency work"; "FEMA", "Force account", "Permanent work", "Public assistance", and "Standards." The definition of these terms are carried in other subparts of these regulations. Section 205.111 was further revised to incorporate the definition of five new terms to be used in the context of public assistance cost sharing and direct Federal assistance. These terms are "Direct Federal Assistance", "Level I Threshold", "Level II Threshold", "Per Capita Personal Income" and "Population". The Agency's rationale for cost sharing and how the thresholds used for funding were derived is provided in the supplemental information section of the the proposed rule change for 44 CFR Part 205 Subpart C which has been published concurrently with this proposed rule change.

Section 205.112 is retitled "Implementation of OMB Circulars A-102 and A-128" and § 202.112(e) is revised to require compliance with OMB Circular A-128 entitled "Uniform Audit Requirements for State and Local Governments."

Section 205.113 entitled "Federal grant assistance" has been revised to incorporate the specific cost sharing provisions. A detailed explanation on the Agency's rationale for cost sharing and how cost sharing thresholds were derived is provided in the preamble to the proposed revision of 44 CFR Part 205 Subpart C. The proposed revision of Subpart C is being published concurrently with the proposed changes to this Subpart. Section 205.113(b) is retitled "Funding Limitations". This paragraph contains the specific cost sharing levels and procedures to be used in funding project applications submitted by eligible program applicants. The information formerly contained in § 205.113(b) is now carried at § 205.113(c). New § 205.113(c)(2)(ii) has been revised to delegate the authority for changing the type of funding after project application approval to the Regional Director.

Section 205.114 entitled "Project applications" has been revised to reflect new procedures for the submission of project applications and supplements.

Section 205.115 entitled "Documentation" is revised to identify specific documents Public Assistance program applicants must maintain for accounting purposes and to support claims for reimbursement. Section 205.115 has also been revised to incorporate into § 205.115(c) the language formerly located at § 205.118(b)(2). Section 205.115(d) outlines procedures for the submission and distribution of audit reports required by OMB Circular A-128.

Section 205.116 entitled "Project performance" has been revised to allow the Regional Director to extend the deadlines under § 205.116(b)(2)(i)(c) for a period not to exceed 30 months, on a project-by-project basis.

Section 205.117, formerly entitled "Final inspections", has been retitled "Claims for reimbursement." This section has been revised to incorporate in part the procedures formerly delineated in § 205.118(a).

Inspections are now covered by § 205.118. This revised section, entitled "Interim and final inspecitons", requires that final inspections be conducted on all projects in excess of $25,000 instead of $10,000, as formerly required at § 205.117(b)(2). This section also transfers the responsibility for scheduling and conducting final inspections from the Governor's Authorized Representative to the Regional Director. The procedures formerly carried at § 205.117(b)(2) have been incorporated into the revised § 205.117 and § 205.119.

Section 205.119 is a new section entitled "Review and approval of claims." This section revises the claims review and approval procedures formerly contained in § 205.118(d) (1) and (2) by deleting the requirement for the Governor's Authorized Representative to submit an audit report with the final claim. This section is also revised to require the Governor's Authorized Representative to submit claims for reimbursement to the Regional Director within 60 days after

receipt of an applicant's final inspection reports. Additionally, this section outlines the Regional Director's responsibility for reviewing and approving final claims.

Section 205.119 entitled "Federal funding" is redesignated § 205.120. This section has been revised to incorporate appropriate references to current letter-of-credit and debt collection policies and procedures.

Section 205.120 entitled "Appeals" is redesignated § 205.121. This section has been revised to delete reference to a 60 day period allowed for the applicant to notify the State of its intent to appeal.

Section 205.121 entitled "Direct Federal assistance" is redesignated § 205.122. This section has been revised to require Associate Director approval for direct Federal assistance requests made after the 10 day time limitation.

Section 205.122 entitled "Availability of materials" has been deleted. This section presented essentially no additional information above that found in Section 318 of the Act.

Environmental Considerations

A Finding of No Significant Impact for the publication of these regulations has been made in accordance with 44 CFR 10.9(e) of the FEMA Environmental Regulations which implements the Council on Environmental Quality's regulation (National Environmental Policy Act Regulations). Copies of the finding are available from the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW, Washington, DC 20472.

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. The major change is the deletion of detailed program audit requirements for grant recipients and the implementation of cost sharing requirements. Therefore, no significant impact is expected. In any event FEMA has no discretion in this action as a result of the Single Audit Act and deficit reduction mandates.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of 5 U.S.C. 605(b). Most public entities receiving grants have audits performed for their own purpose. Therefore, the proposed regulatory changes are not likely to create a significant economic impact on small entities. Consequently, no regulatory analysis will be prepared.

Paperwork Reduction Act

The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has been assigned OMB control number 3067–0149.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant Programs—housing and community development.

For the reasons set out in the preamble, 44 CFR Part 205 is proposed to be amended as follows:

PART 205—[AMENDED]

1. The authority citation for Part 205 is revised to read as follows:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; E.O. 12148.

2. Subpart H is revised to read as follows:

Subpart H—Project Administration

Sec.

Subpart H—Project Administration

§ 205.110 General.

This subpart provides guidance on the administration of Federal assistance for State and local governments, and qualifying private nonprofit institutions under Pub. L. 93–288, as amended. The basic policies and procedures are provided for (a) Federal grants to eligible applicants and (b) direct Federal assistance by a Federal agency as the result of a mission assignment.

§ 205.111 Definitions.

"Advance of funds" means a sum of money provided to a State, local governments, or other Federal agency prior to audit and/or final settlement of its claim.

"Bid guarantee" means a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractural documents as may be required within the time specified.

"Bill for collection" means a request for payment issued to a State or applicant by FEMA to collect excess funds that were overadvanced or paid in error to the applicant.

"Damage Survey Report (DSR)" means a report prepared for each damage site which describes eligible work and costs. This report becomes the basis for Federal funding.

"Direct Federal Assistance" means emergency work eligible under the provisions of sections 306 and 403 of the Disaster Relief Act which is performed by or under the direct supervision of a Federal agency.

"Level I Threshold." An amount of funds which is considered to be within the capability of an applicant for Federal disaster assistance to expend on eligible disaster related public assistance response and recovery activities. This threshold is determined by multiplying the total population served by the applicant times $2.50 (in a case where the State is the applicant, $1.00 will be used), then multiplying that figure by an adjustment factor obtained by dividing the lastest available average per capita personal income for the County in which the applicant is located by the 1984 national average per capita personal income. The threshold will be updated annually to take changes in capability into account. In the case of certain private nonprofit facilities (such as educational, medical, and custodial care), where population served cannot be easily determined, this threshold will be established using one percent of the facility's operating expenditures during the previous fiscal year.

"Level II Threshold." An amount of funds at which the capability of an applicant to respond to a catastrophe begins to be so seriously affected that an increase in the Federal contributon is warranted if the applicant is to make a reasonably rapid recovery from the catastrophe without serious long term disruption of its governmental functions. This threshold is normally determined by multiplying the total population of the applicant times $10.00, then multiplying that figure by the adjustment factor described in the definition of the Level I Threshold. The Threshold will be updated annually to take changes in capability into account. In the case of certain private nonprofit facilities (such as educational, medical, and custodial care), where population served cannot be easily determined this threshold will be established using four percent of the facility's operating expenditures during the previous fiscal year.

"Notice of Interest" means a document filed by each potential applicant describing the types of disaster damage and providing a local contact person for the Federal/State damage survey teams.

"Offset" means a collection procedure whereby FEMA withholds funds due an applicant or the State in order to recoup an uncollectable debt owed by an applicant under a Bill for Collection.

"Payment bond" means a bond executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

"Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

"Per Capita Personal Income." The average amount of income received by or on behalf of all the residents of a given area as estimated by the Bureau of Economic Analysis, U.S. Department of Commerce. See "Survey of Current Business" published in April each year.

"Population." For purposes of establishing Level I and II Thresholds, population is the total resident population of a State or applicant as determined in the latest estimate by the Bureau of the Census. When the Bureau of the Census has not determined the population of a particular applicant or if an applicant does not have a resident population, then, wherever possible, the number of persons served by the applicant will be determined and documented by FEMA.

"Project" means all eligible work at one facility or site.

§ 205.112 Implementation of OMB Circulars A-102 and A-128.

(a) Bonding and insurance. An eligible applicant or recipient, receiving a grant under the Act for construction or facility improvement which requires contracting, shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds for contracts less than $100,000. For contracts exceeding $100,000, the Regional Director may accept the bonding policy and requirement of the grantee provided that a determination is made that the government's interest is adequately protected. If such a determination is not made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price.

(2) A performance bond on the part of the contractor for 100 percent of the contract price.

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

(b) Property management standards. Uniform standards governing the utilization and disposition of property furnished by the Federal government or acquired in whole or in part with Federal funds by State and local governments are as stated in Attachment N, OMB Circular A-102, Revised, applicable to assistance provided under Pub. L. 93-288.

(c) Procurement standards. State and local governments are required to apply the uniform standards, as stated in Attachment O, OMB Circular A-102, Revised, during the procurement of supplies, equipment, construction, and other services under Pub. L. 93-288. Additionally, the following standards are required:

(1) *State and local statutes.* The State, local government, or other organizations issuing a contract shall assure that procurement of work and services authorized under project applications complies with the provisions of the Act and with State and local statutes, regulations and ordinances not in conflict with Federal policies or procedures.

(2) *Contingent payment.* Contracts entered into by an applicant under the Act or the regulations shall not contain a provision which makes the payment for such work contingent upon reimbursement under the Act.

(3) The cost-plus-percentage-of-cost (CPPC) and percentage-of-construction-cost method of contracting shall not be used. Any CPPC contract entered into by applicants in violation of this prohibition will be reviewed by the Regional Director to determine what costs are eligible and reasonable.

(4) *Competitive bidding.* Contracts for eligible work shall be based on competitive bids whenever possible. Contracts entered into on a non-competitive basis will be reviewed by the Regional Director to determine eligible costs. Negotiated contracts shall be in accordance with Attachment O, OMB Circular A-102, Revised.

(5) *Debarred contractors.* The applicant may not enter into any contract with parties whose names appear on the General Services Administration Consolidated List of Debarred, Suspended and Ineligible Contractors. In those cases in which applicants have inadvertently executed contracts with debarred contractors the Regional Director shall review such contracts and allow only those costs that are deemed eligible and reasonable.

(6) *Use of local firms and individuals.* In the awarding of contracts that utilize disaster assistance funds preference shall be given to the extent practicable, to those organizations, firms, and individuals who reside or do business primarily in the area affected by the disaster incident and have appropriate contracting capability. Contracting procedures should be designed to give local contractors the opportunity to participate in open competition with other contractors. Local preference should be mentioned in the invitations for bids and requests for proposals. Contracting officers may assure that use of local firms and individuals by use of the following means:

(i) Advertising in the local area,

(ii) Including local contractors in negotiations,

(iii) Subdividing large contracts into smaller contracts when reasonable,

(iv) Stressing that a contractor shall give first priority to utilizing resources in the disaster area when procuring supplies and equipment, awarding subcontracts and employing workers.

(d) Governmental recipients of assistance under Pub. L. 93-288 shall comply with OMB Circular A-128 entitled "Uniform Audit Requirements for State and Local Governments", including any amendments which are published in the Federal Register by OMB.

§ 205.113 Federal grant assistance.

(a) *General.* Federal grant assistance is provided on the basis of a project application submitted by or on behalf of an applicant and approved by the Governor's Authorized Representative and the Regional Director. When the Regional Director approves a project application, Federal funds are obligated and the approval is final unless appealed in accordance with 44 CFR 205.121. When assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations, an Indian tribe or authorized tribal organization acting as a local government may submit a project application directly to the Regional Director, who may provide Federal assistance to such applicant without State participation.

(b) *Funding Limitations.* (1) Federal funding for public assistance to States and eligible local governments shall be calculated as follows:

(i) Where an applicant has incurred eligible emergency or major disaster related public assistance response and recovery costs in an amount less than the Level I Threshold for such applicant, there shall be no Federal funding of such public assistance activities pursuant to the Act.

(ii) Where an applicant has incurred eligible emergency or major disaster related public assistance response and recovery costs in an amount greater than the Level I Threshold for such applicant, but less than the Level II Threshold, FEMA will reimburse 75 percent of such costs that exceed the Level I Threshold. The remainder of the applicant's eligible public assistance costs will be funded by the State and/or the applicant.

(iii) Where an applicant has incurred eligible emergency or major disaster related public assistance response and recovery costs in an amount greater than the Level II Threshold, FEMA will reimburse 90 percent of such costs that exceed the Level II Threshold, and 75 percent of such costs between the Level I and II Thresholds. The remainder of the applicant's eligible public assistance costs will be funded by the State and/or the applicant.

(c) *Types of Federal grants*—(1) *Categorical grant.* (i) The terms of this type grant require that the applicant perform the scope of work approved in the project application.

(ii) It shall be used in all cases for:

(A) Facilities under construction; and

(B) Private nonprofit facilities.

(iii) Reimbursement to applicants under a categorical grant shall be based on the actual reasonable cost of performing work approved by the Regional Director and limited to the cost sharing provision identified in § 205.113(b) of this subpart.

(iv) *Grant-in-lieu.* If a grantee desires to construct a larger or more elaborate facility it may request a grant-in-lieu. If approved by the Regional Director, the Federal contribution for a grant-in-lieu will be based on the Federal estimate of the net eligible cost of restoring a facility to its predisaster design in accordance with applicable codes, specifications and standards and limited to the cost sharing provisions identified in 205.113(b) of this subpart. The applicant is responsible for all additional costs. The replacement facility to which the grant-in-lieu is applied must be in accordance with the provisions of §§ 205.70 and 205.73(i).

(A) A separate request must be submitted on each Damage Survey Report for which an applicant desires a grant-in-lieu.

(B) The Regional Director's conditions of approval are stated separately for each grant-in-lieu.

(2) Flexible funding grant (section 402(f) of the Act).

(i) If the total estimated cost of all of an applicant's emergency and permanent work exceeds $25,000, an applicant has the option to receive a flexible funding grant. First, all emergency work shall be approved as a categorical grant. The flexible funding grant shall be limited to 90 percent of the otherwise applicable Federal contribution for all permanent work which would be eligible under a categorical grant. Where an applicant determines that permanent restoration of certain disaster damaged facilities would not be in the public interest, it may choose not to restore those facilities, but to build new public facilities for other purposes. Construction of all federally assisted facilities, including any new or modified construction projects, identified on the applicant's listing of flexibly funded projects, shall be in conformity with current applicable Federal, State and local standards, and §§ 205.70 and 205.73(h).

(ii) The applicant shall notify the Regional Director through the Governor's Authorized Representative of its selection of the flexible funding option prior to project application approval. Requests for changes in the type of funding after the project application has been approved shall be referred through the Governor's Authorized Representative to the Regional Director for approval.

(iii) Within 90 days after the date of the Regional Director's approval of the project application, and prior to the start of design or construction of any alternate projects, the applicant shall furnish a listing of the public facilities to be repaired, restored, or constructed with the flexible funding grant; the estimated cost of each ; and a proposed schedule of initiation and completion, including estimated quarterly fund requirements. The applicant shall provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance. The listing shall also itemize those disaster damaged public facilites that are not being restored.

(iv) The only permissible basis for increasing Federal funding in a flexible funding grant is a substantive error or omission in defining the approved scope of work or in the approved estimated costs of such work. Federal funding may be reduced where the applicant fails to comply with applicable laws or FEMA regulations and procedures, including noncompliance with assurances, illegal contracting methods, duplication of benefits and nonconformity with applicable standards.

(3) Small project grant (section 419 of the Act).

(i) In any case in which the Federal estimate of an applicant's eligible costs for permanent restoration under section 402 and debris removal and emergency protective work under sections 403 and 306 of the Act total less than $25,000, the Regional Director may approve the applicant's project application as a small project grant.

(ii) The grant approved by the Regional Director shall be based on the Federal estimate of all eligible work and limited to the cost sharing provisions identified in § 205.113(b) of this subpart. Funds approved under a small project application may be expended:

(A) To complete all approved projects identified on the Damage Survey Reports, or

(B) To complete certain of these approved projects, and with the balance of the approved grant to construct certain other public facilities which the applicant determines to be necessary to meet the community's needs for public services and governmental functions in the disaster affected area. Proposed alternate projects must be approved by the Regional Director prior to the start of construction. Proposed alternate project listing must be submitted within 90 days after the date of the Regional Director's approval of the project application.

(iii) Small project grants may not be approved for private nonprofit facilities under section 402(b) of the Act.

(iv) Upon approval of a project application, the Regional Director will provide the applicant, through the State, with a listing of approved projects. This listing will include a description and an approved estimate of cost for each project.

(v) Payment of the Federal share of the grant will be made to the applicant as soon as possible after the Regional Director's approval of the project application.

(vi) Within 30 days following completion of all work performed under a small project grant, the applicant must submit a listing of completed projects, including any alternate projects, as well as actual costs and work completion dates for each project. The applicant must certify that all work listed is completed and that all funds were expended in accordance with the intent of section 419 of the Act and §§ 205.70 and 205.73(j).

(vii) The only permissible basis for increasing Federal funding under a small project grant is a substantive error or omission in defining the approved scope of work or in the approved estimated costs of such work. Federal funding may be reduced where the applicant fails to comply with applicable laws or FEMA

regulations and procedures, including noncompliance with assurances, illegal contracting methods, duplication of benefits and nonconformity with applicable standards. If an increase in funding is warranted, and it would increase the small project grant to an amount exceeding $25,000, the entire grant shall revert to a categorical grant. If desired, the applicant may request a flexible funding grant in accordance with paragraph (2) above.

(viii) Any remaining balance of such grant not expended by the applicant shall be returned to FEMA.

§ 205.114 Project applications.

(a) *General.* This section describes the basic policies and procedures for processing project applications. The Governor's Authorized Representative is responsible for providing technical advice and assistance to applicants in the processing of applications for Federal grant assistance. All project applications, advances of funds, claims, appeals, payments, refunds and related correspondence between applicants and the Regional Director, shall be forwarded through the office of the Governor's Authorized Representative for review and action.

(b) *Applicants' briefing.* Following the President's declaration of an emergency or a major disaster, the Regional Director and the Governor's Authorized Representative shall jointly schedule and conduct meetings for all potential applicants for public assistance. Policies and procedures for requesting and obtaining public assistance are explained at these meetings.

(c) *Notice of Interest.* Each applicant must submit a Notice of Interest which indicates the type of damage the applicant experienced and designates a local representative to assist in scheduling and conducting of damage surveys. A Notice of Interest form is normally completed by each applicant at the applicant's briefing.

(d) *Damage Survey Reports.* Damage surveys are usually conducted by a Federal-State inspection team. An authorized local representative accompanies the Federal-State inspection team and is responsible for representing the applicant and ensuring that all damage and other eligible work are inspected. The inspectors record pertinent information for each site on a Damage Survey Report.

(e) *Project applications.* A project application form is normally signed and submitted by each applicant at the applicants' briefing or immediately thereafter. Upon completion of the Damage Survey Reports, a project application summary is prepared and attached to the project application form. This summary is then submitted to the Governor's Authorized Representative and the Regional Director for review and approval. The scope of work and amount of funding requested in the project application are based on the Damage Survey Reports, plus such additional documentation as the Regional Director considers necessary.

(1) *Time limitations for submittal.* Project application forms, not signed at the applicant's briefing, must be submitted within 30 days after designation of the area in which the applicant is located. All projects that are not shown to the Federal/State inspection team must be reported in writing to the Governor's Authorized Representative within 60 days after such designation in the event of a major disaster or within 30 days after such designation in the event of an emergency. Lesser time periods may be specified by the Regional Director.

(2) *Funding option.* When the total eligible estimated costs requested in the project application exceed $25,000 the applicant has a choice of the type of funding that best suits its needs, either a categorical or flexible funding grant. This choice is indicated on the project application summary. If the applicant chooses flexible funding, a basic project application (categorical grant) shall be prepared for all emergency work. Permanent restorative work that is eligible for flexible funding assistance will be included as a supplement to the basic project application.

(3) *State review and approval.* The Governor's Authorized Representative shall review all project applications and supplemental project applications and shall recommend approval or disapproval. As a condition for FEMA approval, the State and the applicant must agree to comply with the assurances delineated on the standard project application form. Any grantee or recipient of such FEMA funding other than the State or the applicant shall also provide these assurances plus such other assurances as may be required by these regulations or by the Regional Director.

(4) *Regional Director's review and approval.* The Regional Director reviews the project application for eligibility of applicant, eligibility of work, reasonableness of costs, and other considerations outlined in § 205.70. The applicant is then notified through the Governor's Authorized Representative of the approval or disapproval of its project application or supplement and conditions, if any.

(f) *Advances of funds.* (1) Final settlement does not occur until the applicant completes all approved work for which a claim is made and pays all related bills. At the applicant's request, funds may be advanced to meet current expenditures for approved work. Advances of funds are made under a Letter of Credit established with the State. An advance does not constitute final FEMA acceptance of the costs incurred by the applicant. The total amount advanced against a project application is limited to an agreed upon percentage set by the Regional Director and the Governor's Authorized Representative.

(2) Each cash advance shall be timed to be in accord with the actual, immediate cash requirements of an applicant. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by an applicant for eligible project costs. If an applicant withdraws funds in excess of its immediate disbursement needs, FEMA will request the applicant to refund the over advance.

(3) The final eligible mission assignment cost of work performed by Direct Federal Assistance shall be considered as an advance to the applicant. It shall be counted as part of the total advance which is subject to the limitation in (f)(1) of this section. A refund of an over advance (referred to in (f)(2) of this section) will not be required if such over advance is the result of the inclusion of Direct Federal Assistance work. When the final determination of the Federal share of eligible costs is made in accordance with § 205.113(b) Funding Limitations, a refund of any overpayment will be required.

§ 205.115 Documentation.

(a) All recipients of Federal grants must maintain acceptable disbursement and accounting records to document the work performed and cost incurred on each approved DSR. The documentation required to be maintained by the applicant shall include but not be limited to the following for each DSR:

(1) Force account work—copies of invoices, payroll extracts (cross referenced to source documents), equipment schedules, foreman's daily logs, and issued checks.

(2) Contract work—copies of requests for bids, bid documents, bid summaries, contracts, invoices, inspectors daily logs, and issued checks.

(b) If an audit is necessary, original or source documents must be made available to auditors at one central office of record. These accounting records and documentation must be kept

by the applicant for three years from the date of the final settlement of the claim.

(c) FEMA auditors, State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.

(d) All copies of audit reports that are required under OMB Circular A–128 shall be submitted to the FEMA District Inspector General for Audit responsible for the FEMA region in which the applicant is located. The FEMA Office of Inspector General will distribute copies as appropriate within the agency.

(The information collection requirements contained in § 205.115(b) were approved by the Office of Management and Budget under OMB Control number 3067–0149.)

§ 205.116 Project performance.

(a) The primary responsibility for managing the approved projects rests with the applicant.

(1) *Force account.* Eligible work may be performed with an applicant's own labor and equipment hereinafter referred to as force account. Additionally, applicants may rent privately-owned equipment to perform eligible disaster-related work. Each applicant using force account should maintain adequate, auditable records for each line item of eligible work.

(2) *Contract.* Eligible work may be performed partially or totally by contract.

(b) *Time limitations for completion of work.*—(1) *Emergencies.* All work shall be completed no later than thirty days after declaration of the emergency except:

(i) Based on extenuating circumstances beyond the control of the applicant, the Regional Director may extend the time limitation not to exceed an additional sixty days.

(ii) Based on extenuating circumstances beyond the applicant's control, the Associate Director may extend the time limitation an additional 90 days when requested to do so by the State. Such requests by the State shall be fully justified in writing.

(2) *Major disaster.* (i) Federal assistance shall begin with the start of the incident period under the President's declaration of a major disaster as established in the FEMA-State Agreement. The project completion deadlines shown below are set from the date that the major disaster is declared.

COMPLETION DEADLINES

	Months
(A) Debris clearance	6
(B) Emergency work	6
(C) Permanent work	18

The above completion deadlines apply to categorical, flexible funding and small project grants. The applicant may be required to submit a projected completion schedule for the Regional Director's approval.

(ii) *Exceptions.* (A) Based on extenuating circumstances or unusual project requirements beyond the control of the grantee, the Regional Director may extend the deadlines under § 205.116(b)(2)(i) (A) and (B) for a period not to exceed six months and under (C) for a period not to exceed 30 months, on a project-by-project basis.

(B) Based on a determination that such action is warranted, the Associate Director may extend these deadlines when requested to do so by the State through the Regional Director. Such requests by the State shall be fully justified in writing.

(iii) The Regional Director may impose lesser deadlines for completion of work under § 205.116(b)(2)(i) if considered appropriate.

(c) *Requests for time extensions.* If an applicant finds that an approved project cannot be completed within the time limit prescribed by the Regional Director, the applicant shall immediately forward to the State a request in writing for additional time. Such requests shall clearly identify the reason for the delay and include a projected work schedule for project completion. The Governor's Authorized Representative shall forward the request with a recommendation to the Regional Director. The Regional Director shall notify the applicant, through the State, of approval or denial. As a condition of approval, the Regional Director shall require the applicant to provide periodic progress reports of scheduled work, outlining any problems and unforeseen circumstances that are expected to result in a slippage in the approved schedule. Any changes in approved schedules must be fully justified by the applicant and approved by the Governor's Authorized Representative and by the Regional Director. Requests for time extensions beyond the Regional Director's authority shall be forwarded by the Regional Director to the Associate Director and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date; and

(3) The State and Regional recommendations.

(d) *Cost overruns.* During the execution of approved work under categorical grants, the applicant may find that overruns are occurring on the actual costs of certain projects, compared to the approved estimates on the Damage Survey Reports. Such cost overruns normally fall into three categories:

(1) Overruns because of variations in unit prices.

(2) Overruns because of a change in the scope of eligible work.

(3) Overruns because of delays in timely starts or completion of eligible.

The applicant should report these situations to the Governor's Authorized Representative immediately upon discovery so that appropriate actions can be taken to determine the eligibility of the overruns. An interim inspection by a Federal inspector will normally be necessary to document the eligibility and amount of the overrun. Upon verification that the reported overrun is eligible, a supplemental project application will be prepared by the Regional Director.

§ 205.117 Claims for reimbursement.

(a) *Categorical and Flexible Funding Grants.* The applicant shall submit a claim to the Governor's Authorized Representative within 60 days after completion of all approved work. This claim will list the cost and date of completion for each approved project. The applicant's authorized representative must certify that all work claimed has been completed and that all funds claimed have been paid.

(b) *Small Project Grants.* Final payment is made when a project application is approved. Therefore, no claim for reimbursement is required. The applicant must however submit a listing of completed projects within 30 days following work completion in accordance with 44 CFR 205.113(c)(3)(vi).

§ 205.118 Interim and final inspections.

(a) *Governor's Authorized Representative.* Within 30 days of receipt of the applicant's claim for reimbursement, the Governor's Authorized Representative shall submit the applicant's completed projects listing to the Regional Director for final inspection scheduling purposes.

(b) The Regional director shall schedule and conduct those final inspections as required by this section

and any additional interim and final inspections deemed necessary. The Regional Director shall ensure that the Governor's Authorized Representative receives copies of all completed final inspection reports.

(c) *Final inspection requirements.* The following requirements for final inspections are applicable to categorical and flexible funding grants.

(1) When the total claim for a completed project exceeds $25,000, a final inspection is required.

(2) When the total claim for a completed project is less than $25,000, the Regional Director may accept the applicant's certification that all work is complete or conduct such field reviews as deemed appropriate.

§ 205.119 Review and approval of claims.

(a) *Governor's Authorized Representative.* The Governor's Authorized Representative shall review all claims and recommend to the Regional Director an amount for approval. The Governor's Authorized Representative shall submit the applicant's final claim to the Regional Director within 60 days after receipt of the final inspection report and will certify that the funds were expended in accordance with the provisions of the FEMA-State Agreement.

(b) *Regional Director.* Following a review of the applicant's claim and the Governor's Authorized Representative's recommendation, the Regional Director will determine the final eligible amount. During the Regional review process the Regional Director may conduct a field review to gather additional information. If discrepancies in the applicant's claim cannot be resolved through a field review, a Federal audit should be used as a last resort in the reconciliation of a claim. Requests for Federal audits must be in writing and must provide a detailed justification as to the need for audit. If the Regional Director does not agree with the findings of the Federal Audit and the claim cannot be resolved at the Regional level, the case will be forwarded to the Associate Director for resolution. The Regional Director or Associate Director may require additional Federal audits if necessary.

§ 205.120 Management of Federal Funds.

(a) The State shall ensure that Federal funds are spent for the purposes intended and in compliance with Federal laws and regulations. Additionally, the State shall ensure that adequate administrative and accounting procedures are established to properly account for all approved funds. In each case, the State agency concerned shall provide such authenticated reports as the Associate Director or the Regional Director may require, covering the status and application of the funds, the liabilities and obligations on hand and other pertinent information.

(b) Release of Federal funds for State or local governments. A request for advance of funds or reimbursement that is approved by the Regional Director, shall be processed by the State in accordance with established letter-of-credit policies and procedures.

(c) Recovery of excess advances from State or local governments. (1) A bill for collection will be issued to the State immediately upon determination that the applicant has received funds in excess of the amount approved by the Regional Director. The States shall advise applicants that bills for collection are due upon receipt and that any appeals of the bill must be filed with the Regional Director within 60 days. If the bill for collection is not paid in full within 30 days, interest will be charged on the unpaid portion from the date of issuance. In the event that an appeal is submitted by the applicant, final determination of the amount of the bill for collection will be delayed until the appeal is settled by the Regional Director or the Associate Director. However, interest will be charged from the date of issuance on any portion of the bill for collection which is finally determined to be owed.

(2) If by the expiration of the period for appeals, the Regional Director has not received payment for the full amount of the bill for collection, the State will be notified in writing that the claim is past due and is being referred to the Claims Collection Officer for action. This action may include an offset against future claims for disaster relief from the applicant or the State. 44 CFR Part 11 Subpart C outlines the policies and procedures to be followed by FEMA in the collection of such debts.

(d) Return of overadvanced funds by other Federal agencies. Other Federal agencies shall promptly return to FEMA any advances of funds which are in excess to their requirements in carrying out assignments made to them by FEMA.

§ 205.121 Appeals.

(a) An applicant may request the Governor's Authorized Representative to submit an appeal to the Regional Director for reconsideration of any determination that the Regional Director made related to Federal assistance for that applicant. The applicant's written request shall be made within 60 days of the date of the determination that is being appealed and shall include additional information as justification.

(b) The State shall forward such appeals within 30 days of receipt of the appeal from the applicant, together with the State's comments, recommendations, and any additional information it may have.

(c) Upon receipt of an appeal, the Regional Director shall review the material submitted and make such additional investigation as deemed appropriate. Following the review and investigation, the Regional Director shall notify the State, in writing, as to disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) If the Regional Director denies the appeal, the applicant may request the State to submit a second appeal to the Associate Director. Such appeal shall be made in writing, through the Regional Director, and shall be submitted not later than 60 days after receipt of notice of the Regional Director's denial of the first appeal. Action by the Associate Director is final.

§ 205.122 Direct Federal assistance.

(a) When the State and local government lack the capability to perform or to contract for eligible debris removal and/or emergency work, the applicant may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 205.113(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart E of these regulations. Details concerning reimbursement of other Federal agencies are contained in Subpart I.

(b) Debris removal and emergency work by direct Federal assistance in response to such a request shall normally be performed on publicly owned property. Under exceptional circumstances when in the public interest, and based on written assurances of right-of-entry and indemnification provided by the State, the local government, or the owner, such direct Federal assistance may be performed or private property.

(c) *Requests by applicants.* (1) The applicant shall submit requests for direct Federal assistance through the Governor's Authorized Representative for the Regional Director's approval.

(2) Requests must be made within 10 days after an applicant's designation for public assistance, unless that period is specifically extended or shortened by the Associate Director.

(3) Requests for direct Federal assistance shall be in the form of a resolution by the governing body of an

eligible applicant and shall include an agreement to:

(i) Provide without cost to the United States all lands, easements and rights-of-way necessary to accomplish the approved work; and

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal government against any claims arising from such work.

(4) The request shall be accompanied by:

(i) A statement of the reasons why the work cannot be performed by the applicant or the State government; and

(ii) Assurance by the applicant of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88–352, 78 Stat. 241 (42 USC 2000d–2000d–4), and section 311, Pub. L. 93–288.

(d) *Requests by the State.* (1) In those instances where the required resolution by each applicant cannot be obtained on a timely basis to meet immediate needs, the Governor's Authorized Representative may submit a State request for direct Federal assistance which conforms to the requirements of (c) (3) and (4) for the Regional Directors's approval.

(2) Such State requests must be submitted within ten days after the date of the applicant's designation for public assistance. Applicants covered by the State request shall submit an appropriate request through the Governor's Authorize Representative in accordance with paragraph (c) of this section within 10 additional days. The time limits of this paragraph may be extended by the Associate Director.

(e) *Approval.*—(1) *State.* If the Governor's Authorized Representative concurs that the debris removal or emergency work is necessary and cannot be accomplished by the applicant, by another local government, or by the State, the request will be endorsed and forwarded to the Regional Director together with a statement of the reason why the State cannot provide the requested assistance.

(2) *Regional Director.* (i) If the Regional Director approves the request, a mission assignment will be issued to the appropriate Federal agency. The assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, a Damage Survey Report shall be prepared establishing the scope and cost of eligible work. The Damage Survey Report shall then be submitted to the Regional Director for approval. The Federal agency shall not exceed the limit on funding approved by the Regional Director without obtaining prior authorization.

(ii) If all or any part of the requested work falls within another Federal agency's statutory authorities and capabilities, the Regional Director shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(f) Time limitation for completion of work by a Federal agency under a mission assignment is three months after the President's declaration. Based on extenuating circumstance or unusual project requirements, the Regional Director may extend this time limitation.

(g) *Project management.*—(1) *Federal agency responsibilities.* The performing Federal agency shall ensure that the work is completed in accordance with the Regional Director's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the Regional Director, the Governor's Authorized Representative, and the applicant advised of work progress and developments. The Federal agency is also responsible for obtaining any necessary permits or licenses and for compliance with applicable Federal, State and local laws and requirements. A final inspection report will be completed on all direct Federal assistance work. Final inspection reports will be signed by a representative of the performing Federal agency and the applicant's authorized agent. Once the final eligible mission assignment cost for an applicant is determined (including Federal agency overhead), it shall be included as an eligible cost in the applicant's project application [see § 205.113(b) Funding Limitations and § 205.114(f) Advances of Funds].

(2) *Applicant responsibilities.* The applicant shall assist the performing Federal agency in all support and local jurisdictional matters that a private owner would assume in a relationship with a performing contractor.

Dated: April 4, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86–8478 Filed 4–17–86; 8:45 am]

BILLING CODE 6718–02–M

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44 CFR Part 205

Disaster Assistance; Subpart M (Hazard Mitigation)

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart provide guidance for the implementation of section 406 of the Disaster Relief Act Amendments of 1974, (The Act). Section 406 requires that, as a condition of grant or loan assistance provided under the Act, State and local applicants shall repair damaged facilities in conformity with applicable codes, specifications and standards and in accordance with applicable standards of safety, decency and sanitation. As a further condition of assistance, State and local applicants are required to evaluate the hazards in the disaster areas and take appropriate actions to mitigate such hazards, including safe land use and construction practices.

DATE: Comment: DUES June 17, 1986.

ADDRESSES: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 O Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street SW., Washington, DC 20472, Telephone (202) 646–3681.

SUPPLEMENTARY INFORMATION: The Disaster Relief Act Amendments of 1974 included, for the first time in federal disaster legislation, at section 406, a requirement that recipients of assistance, as a condition of receiving such assistance, take measures to "mitigate" hazards in the presidentially declared disaster areas. Within the context of the legislation, the term "mitigate" is taken to mean "reduce" or "avoid" exposure or vulnerability to hazards on a long term basis.

The requirement to take actions to mitigate damages takes two forms in the wording of section 406 of the Act. First, section 406 requires that applicants undertake repair and reconstruction "in accordance with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards . . ." This clearly indicates a recognition by Congress that many facilities eligible for repair under the Act will be damaged because, to some extent, they were not orginally constructed in consideration of the hazards that may be present. There are many reasons why facilities may have not originally been built in recognition of hazards. First, maps and other technical information on the location and severity of hazards was not generally available when many public facilities were built on older urban areas. In addition, such things as beach erosion, removal of vegetation, changes in stream channels, or other long term alterations to the natural environment

have, in many cases, made facilities vulnerable to damage from flooding or mudslide threats that were not present when the facilities were initially constructed. Finally, many communities knowledgable of the potential effects of hazards within their jurisdictions have underestimated the economic impact of the hazards and therefore not considered them in their development decisions.

The second aspect of "mitigation" included under section 406 takes into consideration these potential problems and includes a requirement, therefore, that "as a further condition of any loan or grant made under the provisions of this Act, the State or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land use and construction practices in accordance with standards prescribed or approved by the President . . ." Through this part of the law, Congress has introduced four important concepts into the disaster assistance process. First, State and local governments are required to "evaluate" the natural hazards in the areas where grants or loans are to be used. Congress clearly intended through this requirement that repair and reconstruction should be done, at a minimum, in full recognition of the degree of risk present in the disaster area, to the extent that this degree of risk can be known. The second concept involves taking "appropriate" actions to mitigate the hazards present. Use of the word "appropriate" indicates that mitigation measures must pass some test of reasonableness. Since the overall intent of section 406 is to minimize the potential for future damages, and therefore future costs for repair or replacement, it can be inferred that appropriate actions are those which balance the cost of the mitigation actions against the potential cost of continued damages if such measures are not taken. Underlying the Act is a clear recognition that some future damages can be avoided through reasonable and cost-effective measures, but that some mitigation measures may be more costly than the damages they are intended to prevent and therefore not appropriate. The third concept introduced is that, among those actions which may be considered appropriate in mitigating hazards, land use and construction practices should be given particular attention. Land use plans and building codes are generally adopted on a community wide basis and are long term approaches to addressing problems of hazard vulnerability. Finally, the President is authorized to prescribe hazard mitigation standards and approve such standards proposed by State or local governments.

Following enactment of the Federal Disaster Relief Act Amendments of 1974, FEMA's predecessor, the Federal Disaster Assistance Administration, undertook studies to identify the most feasible approach to carry out Federal responsibilities under section 406.

These studies lead to adoption, on November 8, 1979, of the regulations currently found at 44 CFR Part 205, Subpart M, Hazard Mitigation.

In dealing with the requirement to evaluate hazards and take mitigation actions as a condition of assistance, the existing regulations recognize that it would be impractical to provide assistance to applicants only after these conditions have been met. Instead, the existing rule established a process whereby States were required to prepare and submit, within 180 days following declaration of the disaster, a hazard mitigation plan as evidence of compliance with this section of the law. While this approach sacrifices some control that FEMA has over the expenditure of funds by making assistance available to applicants before all the conditions for that assistance have been met, it recognizes that the need to provide disaster assistance in an expeditious manner following a disaster is of primary importance. The following proposed rule also incorporates this concept (i.e. a plan as evidence of compliance with the requirements of section 406) but makes several important changes to improve implementation.

Since 1979, a number of factors have combined to necessitate a comprehensive revision of the current subpart M regulations. First, in 1980, the Office of Management and Budget issued a directive to eleven Federal agencies, including FEMA, requiring them to coordinate post-flood disaster assistance and recovery planning and to emphasize nonstructural flood hazard mitigation measures, to the greatest extent possible, as part of an effort to minimize Federal expenditures over the long term for flood disaster recovery assistance. An interagency agreement signed by these agencies created a process of post-disaster surveys and reports prepared by interagency teams, under the leadership of FEMA, which are intended to identify and recommend common federal approaches for recovery and mitigation actions. Since many of the disasters declared by the President result from floods, and since this interagency hazard mitigation team process impacts significantly on FEMA's recovery and mitigation programs, it is essential that the substantive and procedural requirements of both be closely coordinated. Also, with the creation of FEMA opportunities were presented for integrating section 406 requirements into overall emergency management functions of the agency which could not have been anticipated at the time the existing rule was being drafted. Finally, evaluation of the extent to which the present regulations have generated consistent, effective and meaningful hazard mitigation actions by State and local applicants has revealed some shortcomings in the current approach. These revised regulations are intended to address those shortcomings as well as incorporate the current role of hazard mitigation in FEMA's overall objectives of comprehensive emergency management.

Specifically, the revised section 406 regulations are intended to set forth clearer guidance on the scope and content of hazard mitigation plans. In the past, the plans FEMA has required under the authority of this section have varied greatly in quality and effect. One reason for this is that FEMA has never established criteria to enable determination of what constitutes an acceptable evaluation of hazards and acceptable actions to mitigate hazards. Without such criteria it has been impossible to determine whether or not States have made an adequate commitment to the mitigation of hazards, as prescribed by law. While, for the reasons stated above, it is impractical to withhold disaster assistance until applicants have complied with this section, some form of *quid pro quo* is required to ensure that the section 406 plan requirement is not viewed primarily as an afterthought. These revised regulations attempt to remedy the problems caused by unclear minimum criteria for hazard mitigation plans and the absence of clear connections between section 406 plans and the availability of current or future disaster and emergency assistance. The basic approach established by the revised regulations includes:

1. Focusing on the presence or absence of a State plan, program, strategy or policy for a comprehensive, multi-hazard approach to hazard mitigation on an on-going basis, and

2. Drawing heavily impacted and hazard-prone communities in the disaster area into the hazard mitigation planning process by requiring local

participation in the hazard mitigation planning process.

All the laws, programs, policies and activities within a State which contribute to decreasing or increasing vulnerability to natural hazards constitute its *de facto* hazard mitigation program. In response to a major disaster, FEMA will request the State to review these factors and determine whether or not the existing State laws, programs, or policies are adequate for controlling vulnerability to the hazards responsible for the disaster. Where State activities have not been analyzed in terms of their impact on hazard vulnerability, the proposed rule would require the State to draft a hazard mitigation plan which sets forth goals and objectives for improving State level management of hazards, and specify identifiable action items, timetables, and responsible agencies for achieving the goals and objectives. On the other hand, where States already have in place most of the elements of a comprehensive mitigation strategy, the proposed rule will require only a small scale mitigation program review and plan update, if necessary. This review will be intended to identify whatever minor adjustments are needed in the light of the recent disaster. In States with effective programs, very little additional work would be required, at the State level, to meet the hazard mitigation planning requirements of this proposed rule.

In the past, the hazard mitigation planning responsibilities of local government grant recipients under section 406 have not been clearly delineated. While the State is required to submit the plan as "evidence of compliance" with section 406, the requirements to take appropriate mitigation actions, including safe land use and construction practices, apply equally to local governments. Often, section 406 plans submitted by States have included recommendations made by the States to local governments to take certain actions to mitigate hazards. States, however, generally have limited authority to require such actions. At times States have made recommendations in hazard mitigation plans without the support or concurrence of the local governments to which they apply. Since the local governments have made no commitments to take these actions, and the States have no or limited authority to require them, the commitment to and chances of implementation are small. The proposed rule will require that local governments in the affected disaster areas be involved in the hazard mitigation planning process.

A weakness of the current procedures for administering section 406 requirements is FEMA's limited ability to use hazard mitigation requirements as a condition of assistance. The proposed rule addresses this issue in two ways. First, if no progress is being made by the State and local governments such that it appears unlikely that an acceptable plan or plan update will be forthcoming within 180 days, FEMA can suspend processing of applications until appropriate progress is demonstrated. Second, if States fail to submit a section 406 plan, or submit a plan which does not meet the minimum criteria of this proposed rule, the Regional Director may suspend the processing of public assistance project applications and withhold funding for any future disasters that occur in the areas covered by the plan.

The proposed rule sets forth, for the first time, specific criteria related to the contents of hazard mitigation plans. One of the key provisions of the proposed rule is the requirement to include proposed hazard mitigation measures that State and local agencies agree to undertake as a condition of assistance called "appropriate actions." These "appropriate actions" will be proposed by the State, subject to approval by the FEMA Regional Director, as part of the hazard mitigation plan. Appropriate actions represent the basic State and local management controls, such as building codes or design and construction criteria for public facilities, that are in general use around the nation. The purpose of requiring the hazard mitigation plans to include appropriate actions is to develop minimum standards for hazard mitigation in communities receiving federal disaster assistance. Appropriate actions identified by States and localities in hazard mitigation plans will be closely monitored by FEMA, and failure to implement appropriate actions in accordance with the hazard mitigation plan could jeopardize some forms of future disaster assistance.

The final major change proposed in this rule pertains to FEMA's approach to "disaster proofing" in the public assistance program. Disaster proofing is a category of eligible public assistance costs that can be used to help make damaged facilities more resistant to future damages as part of the process of reconstruction or repair. The current policy allows a small percentage of the total project cost (generally up to 15%) to be allocated for upgrading materials or modifying design of damaged facilities to make them less vulnerable. The current policy does not allow the applicant to contribute to the costs of disaster proofing by assuming any costs required above the 15%.

The proposed rule modifies this policy by, first, expanding the applicability of disaster proofing to any measure which would protect the damaged facility from future damages, whether or not such measure is an integral part of the repairs to the damaged facility and, second, allowing the applicant to contribute any amounts over and above the small percentage to be contributed by FEMA. This change in FEMA's approach to disaster proofing should promote greater creativity in the development of measures which will protect facilities subject to repetitive damages.

Environmental considerations

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), FEMA has prepared an environmental assessment for the issuance of proposed regulations implementing section 406 of the Act. This proposed rule is essentially procedural and is intended to clarify and add additional detail to existing procedures. FEMA has determined, therefore, that there will be no significant impact on the environment caused by issuance of this rule. As a result, an environmental impact statement will not be prepared. Copies of this assessment are available for inspection at: Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472, Telephone (202) 646–4106.

Executive Order 12291, "Federal Regulations"

This rule is not a major rule within the context of Executive Order 12291. It will not have an annual impact on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 605 (The Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, Title 44, Code of Federal Regulations, Part 205 is proposed to be amended as follows:

1. The authority citation for Part 205 is revised to read as follows:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; E.O. 12148.

2. Subpart M is revised to read as follows:

Subpart M—Hazard Mitigation

Subpart M—Hazard Mitigation

§ 205.400 General Introduction.

(a) *Purpose.* This subpart prescribes actions and procedures for implementing section 406 of The Disaster Relief Act of 1974 (Pub. L. 93–288), as amended, and prescribes Federal, State and local hazard mitigation responsibilities following the declaration of a major disaster or emergency by the President.

(b) *Content.* This subpart covers—

(1) The requirements for hazard mitigation planning and implementation that State and local grant recipients must meet as a condition for receiving disaster assistance loans or grants pursuant to Pub. L. 93–288 (the Act);

(2) The form and content of evidence of compliance State and local grant or loan recipients must provide showing that they have met such requirements;

(3) The process by which the Federal Emergency Management Agency (FEMA) will administer these requirements and provide technical assistance to applicants;

(4) The relationship between section 406 requirements and Interagency Flood Hazard Mitigation Teams required by the Office of Management and Budget directive of July, 1980, and;

(5) The criteria and procedures to be used by FEMA for funding hazard mitigation measures eligible for grant assistance under section 402 of the Act.

(c) *Requirements.* In enacting the Disaster Relief Act of 1974, Congress intended to provide assistance to alleviate the suffering and damage which result from disasters by, among other things, encouraging hazard mitigation measures, including safe land use and construction regulations, to reduce losses from disasters. The Act requires FEMA to place certain conditions upon any assistance provided under the Act. These conditions include—

(i) That State and local grant recipients shall agree that any repair or reconstruction financed under the Act be done in accordance with applicable standards of safety, decency and sanitation and in conformance with applicable codes, specifications and standards;

(2) That State and local grant recipients shall agree to evalaute the hazards in the impacted disaster areas and shall take appropriate action to mitigate such hazards in accordance with standards prescribed or approved by the President; and

(3) That State and local grant recipients shall provide evidence of compliance with paragraphs (c) (1) and (2) of this section as may be required by regulation.

(d) *Financial Assistance for Hazard Mitigation Planning.* The costs incurred by State and local governments for writing hazard mitigation plans prescribed under this subpart are the responsibility of the State and local governments. FEMA assistance available for this activity is limited to technical assistance. Nonetheless, there are a number of FEMA funded planning assistance programs that States and localities may use to help offset the costs of prescribed post-disaster hazard mitigation planning. For example, section 201(d) of Pub. L. 93–288 authorizes FEMA to make grants to states on an annual basis for the purpose of improving, maintaining and updating state disaster assistance plans. These plans, along with technical assistance authorized under Title II, are intended to develop comprehensive and practicable programs for preparation against disasters, including hazard reduction, avoidance and mitigation, among other things. States are encouraged to use this program (referred to as the Disaster Preparedness Improvement Grant Program) for the purposes of developing and implementing hazard mitigation plans prescribed by this subpart. Furthermore, states are encouraged to use financial resources provided by FEMA through other planning assistance programs included in the Comprehensive Cooperative Agreement or any other funding mechanism in use by FEMA to plan and carry out comprehensive, statewide multi-hazard mitigation actions.

(e) *Significant Commitment.* As a prerequisite to major disaster assistance under the Disaster Act, the governor of the affected State is required, among other things, to certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of funds for alleviating the damage, loss, hardship or suffering resulting from the disaster. Funds allocated for the preparation of hazard mitigation plans and the coordination of State and local hazard mitigation actions prescribed by this subpart may constitute a portion of this significant State commitment.

(f) *Objections of Post-Disaster Hazard Mitigation Activities.* The objectives of section 406 of the Act are—

(1) To ensure that repairs and construction funded under the Act are protected from future damages to the greatest extent practicable limited only by consideration of engineering feasibility and cost-effectiveness;

(2) To use information and experience gained by the occurrence of a disaster to evaluate and improve where necessary State and local programs, policies, authorities and activities which affect the vulnerability of the built environment to damages from natural disasters;

(e) To incorporate mitigation consideration into all aspects of the recovery effort, and;

(4) To ensure that the appropriate resources of the Federal government are available to assist State and local governments in devising and carrying out programs to reduce or avoid vulnerability of the built environment to damages from natural hazards.

§ 205.401 Definitions.

As used in this subpart, the following definitions apply—

"Appropriate actions" are the actions state or local governments agree to take to mitigate hazards in the disaster area as a condition of receiving federal assistance. Appropriate actions are the hazard mitigation actions an applicant must agree to carry out in order to minimize hazard vulnerability based upon the degree of risk present in the disaster area.

"Disaster Proofing" means any modification or improvement in design of a facility, or system of which the damaged facility is a part, or any protective measure or technique, whether or not it is an integral part of a damaged facility, which will reduce the potential for damages to the facility.

"Federal Hazard Mitigation Coordinator" (FHMC) is the FEMA employee responsible for representing the agency for each major disaster declaration in carrying out the responsibilities of this subpart and coordinating post-disaster hazard mitigation actions with other agencies of government at all levels.

"Hazard Mitigation" is the process of systematically evaluating the nature and extent of vulnerability to the effects of

natural hazards present in society and planning and carrying out actions to minimize future vulnerability to hazards to the greatest extent practicable.

"Hazard Mitigation Survey Teams" are teams formed following the occurrence of a presidentially declared major disaster for the purpose of identifying post-disaster hazard mitigation opportunities and planning, recommending and coordinating the recovery and mitigation actions of all levels of government. Survey teams consist of State and appropriate local government representatives, and representatives of any Federal agencies which the Regional Director determines to be necessary to provide technical assistance or coordinate program activities. In the case of flood disasters, interagency hazard mitigation teams as defined in this subpart shall serve the purpose of hazard mitigation survey teams.

"Interagency Agreement for Post-Flood Hazard Mitigation Planning" is the interagency agreement signed by twelve federal agencies as a result of a directive issued by the Office of Management and Budget to these agencies to coordinate their post-disaster recovery assistance following presidentially declared flood disasters and to use this assistance to help in reducing any further damages through the most appropriate means available, including non-structural approaches.

"Interagency Flood Hazard Mitigation Teams" are teams consisting of representatives of the agencies signatory to the Interagency Agreement for Post-Flood Hazard Mitigation Planning which are activated following presidential flood disaster declarations for the purpose of recommending, planning and coordinating post-disaster hazard mitigation actions.

"Local Hazard Mitigation Coordinator" (LHMC) is the representative of local government who serves on Flood Hazard Mitigation Teams or Survey Teams and who is the primary point of contact with FEMA and other agencies in the planning and implementation of post-disaster hazard mitigation measures.

"State Hazard Mitigation Coordinator" (SHMC) is the representative of state government who serves on Flood Hazard Mitigation Teams or Survey Teams and who is the primary point of contact with FEMA and other agencies in the planning and implementation of post-disaster hazard mitigation measures.

§ 205.402 Responsibilities.

(a) *Purpose.* Programs to identify problems of hazard vulnerability and implement measures to avoid or reduce potential uneconomical disaster costs require the full partnership of Federal, State and local governments with appropriate consultation with the general public. This section identifies roles and responsibilities of FEMA, States and local participants in carrying out the requirements of section 406 of the Act.

(b) *FEMA.* The responsibilities of FEMA, acting through the appropriate Regional Director, in carrying out the requirements of this subpart and the Act are to—

(1) Include appropriate provisions for hazard mitigation in the FEMA/State Agreement for each major disaster declaration made by the President;

(2) Appoint a Federal Hazard Mitigation Coordinator (FHMC) for each disaster, in accordance with applicable FEMA policies, whose duties include;

(i) Ensuring that all FEMA disaster assistance actions are in compliance with 44 CFR Parts 9 and 10 and this subpart;

(ii) Leading or overseeing leadership of hazard mitigation survey teams, and, in the case of flood disasters, the Interagency Flood Hazard Mitigation Teams;

(iii) Obtaining and coordinating resources of other Federal agencies in support of FEMA's hazard mitigation responsibilities;

(iv) Serving as the point of contact with the State Hazard Mitigation Coordinator (SHMC);

(v) Monitoring and following up with State and local participants to ensure compliance with this subpart and implementation of agreed upon hazard mitigation measures;

(vi) Providing technical support to State and local participants in developing and carrying out their hazard mitigation programs;

(vii) Coordinating with the Regional Director's representative responsible for public assistance to ensure that appropriate conditions and standards approved by the Regional Director are incorporated into FEMA funded projects; and

(viii) Assuming responsibility for other hazard mitigation functions as necessary;

(3) Follow up with State and local grant recipients to recover Federal funding whenever an applicant fails to satisfy any conditions upon which approval of the grant was based;

(4) Make determinations as to whether documents, plans or reports submitted by State and local applicants constitute adequate evidence of compliance with section 406;

(5) Establish hazard mitigation conditions, including land use and construction requirements with general applicability throughout the impacted communities, as conditions for approval of FEMA grants and loans;

(6) Evaluate existing hazard mitigation plans and determine whether State and local applicants, in fulfilling the requirements of the subpart, shall either update existing hazard mitigation plans or develop new ones;

(7) Ensure that all Federal grant or loan recipients are aware of hazard mitigation requirements;

(8) Identify the need for and request or direct appropriate technical assistance from other Federal agencies required by FEMA to carry out satisfactorily its responsibilities under this subpart, in accordance with 44 CFR 205.151;

(9) Provide technical assistance to State and local governments in fulfilling the requirements of this subpart; and

(10) Conduct periodic review of State hazard mitigation activities and programs to ensure that States are adequately prepared to meet their responsibilities under the Act.

(c) *States.* The responsibilities that States are required to undertake following a disaster to meet the requirements of this subpart include:

(1) Appointing a hazard mitigation coordinator, who reports to the governor or his authorized representative, to serve as a point of contact with the FEMA hazard mitigation coordinator for all matters relating to Section 406 planning and implementation;

(2) Preparing and submitting, in accordance with the FEMA/State Agreement and the requirements of this subpart, a hazard mitigation plan(s) or updates to existing plans, as appropriate;

(3) Following up with local governments to assure that as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken by local governments. This involves coordination of plans and actions of local applicants to assure that they are not in conflict with each other or with State plans; and

(4) Ensuring that the activities, programs and policies of all State agencies related to hazard vulnerability and management are coordinated and contribute to the overall lessening or avoiding of vulnerability to natural hazards.

(d) *Local Governments.* For the purposes of this subpart, the definition of local governments found at 44 CFR Part 205, Subpart A applies. Local governments are responsible for meeting the same requirements of section 406 of

the Act for hazard mitigation as States, including evaluating hazards and undertaking hazard mitigation measures. A hazard mitigation plan submitted by a State in fulfillment of the requirements of this subpart should address appropriate local hazard mitigation needs and measures. Local responsibilities include:

(1) Participating, along with the State and other appropriate local governments, in the process of evaluating hazards and adopting appropriate hazard mitigation measures, including land use and construction standards, as a condition of grants or loans under the Act;

(2) Participating in hazard mitigation survey teams, and interagency hazard mitigation teams, as appropriate; and

(3) Participating in the development of Section 406 plans, as appropriate, in conjunction with State hazard mitigation planning activities.

§ 205.403 Disaster Declaration Activities.

(a) *Purpose.* As part of FEMA's response to a governor's request for a major disaster declaration and, as part of the preliminary damage assessments conducted by FEMA, FEMA will evaluate information concerning the status of hazard mitigation efforts in the impacted states and localities. Through this evaluation FEMA will determine—

(1) The extent to which the disaster may have resulted from failure to carry out hazard mitigation actions that were a condition of federal assistance from previous disasters;

(2) The status of ongoing hazard mitigation programs and policies in the affected areas for use in tailoring the hazard mitigation conditions to be included in the FEMA/State disaster assistance agreement; and,

(3) The extent to which previously adopted hazard mitigation programs or actions were successful in reducing damages.

(b) *Program Evaluation:* As part of the process of reviewing requests for major disaster declaration, FEMA will conduct a hazard mitigation review. This review will consist, at a minimum, of evaluation of—

(1) The status of hazard mitigation plans or plan updates required as a condition of any previous disaster declarations for the same or similar previous disaster in the state. The review will determine whether any previous plans or plan updates were approved, not approved or not submitted in accordance with the requirements of this subpart by the state;

(2) The status of any appropriate actions which the state or localities agreed to undertake as a condition of previously provided disaster assistance. This includes evaluation of whether such appropriate actions have been taken or are in the process of being taken in accordance with the schedule established in the previous Section 406 plan of plan update;

(3) The presence or absence of a statewide comprehensive hazard mitigation plan, program or strategy, and

(4) Any other hazard mitigation information available to and considered relevant by the Regional Director or Associate Director, including the extent to which previously adopted hazard mitigation programs or actions may have contributed to reducing the impact of the disaster.

(c) *FEMA-State Agreement.* As part of the disaster assistance agreement for each major disaster declaration, the Regional Director shall include requirements, in accordance with section 406 of the Act, for taking appropriate actions to mitigate the hazards as a condition of federal assistance. The FEMA-State Agreement shall include the following required provisions:

(1) State and local grant recipients shall agree that repair or reconstruction financed under the provisions of the Act shall be in accordance with applicable standards of safety, decency and sanitation and in conformance with applicable codes, specifications and standards;

(2) State and local grant recipients agree that as a condition of any federal loan or grant, they will evaluate the hazards in the disaster area and shall make appropriate recommendations to mitigate such hazards;

(3) The State agrees to prepare and submit a hazard mitigation plan (or, hazard mitigation plan update) prepared in accordance with the requirements of § 205.405 of this subpart not later than 180 days after the date of the declaration of a major disaster to the Regional Director for approval;

(4) The State agrees to follow-up with local applicants to assure that as a condition of any grant or loan under the Act; appropriate hazard mitigation actions are taken by local applicants. This includes assuring that any appropriate actions included in the hazard mitigation plan or plan update which pertain to local applicants have been reviewed by the local applicants;

(5) The Regional Director agrees to make Federal technical assistance and advice available to support the planning efforts and actions of State and local applicants. In addition, the Regional Director may include other provisions or conditions in the agreement necessary to clarify responsibilities and meet the requirements of section 406 of the Act.

§ 205.404 Hazard Evaluation and Mitigation.

(a) *Hazard Mitigation Surveys.* Hazard mitigation surveys are performed immediately following the declaration of a disaster. The purpose of these surveys is to determine—

(1) The extent, nature and causes of damages which resulted in the disaster,

(2) Hazard mitigation measures that need to be incorporated into the response and recovery process to prevent uneconomical reinvestment in hazard prone areas and,

(3) Hazard mitigation programs and strategies that need to be improved or added to the normal operating procedures of Federal, State and local governments to minize future exposure to hazards in the disaster area(s). In preparing for hazard mitigation surveys, the FHMC and other appropriate members of the survey team should take part in preliminary damage assessments undertaken by FEMA when appropriate. Post-disaster surveys are an essential element of comprenhesive post-disaster mitigation since they create opportunities to influence recovery actions and provide direction to long term post-disaster mitigation planning.

(b) *Survey Teams.* Survey teams consist of—

(1) Representatives of Federal agencies that administer programs for facilities or activities that have been impacted by the disaster or that could contribute to accomplishing hazard mitigation through the recovery process;

(2) Representatives of impacted State and local jurisdictions;

(3) FEMA staff with relevant hazard specific program responsibilities (fire, earthquake, dam failures, flood, hurricane, etc.), and;

(4) Other non-governmental individuals with expertise deemed necessary or appropriate by the Regional Director. In the case of flood disaster, the interagency hazard mitigation team shall take the place of and perform the functions of the survey team. At a minimum, a survey team shall consist of a FEMA representative, and at least one State and a local representative, where feasible.

(c) *Survey Reports.* Within 15 days following a non-flood presidential disaster declaration, the FEMA team leader, in consultation with and with assistance from the other members of the hazard mitigation survey team, shall prepare a Hazard Mitigation Survey Report. This report shall, at a minimum, address the following:

(i) A general description of the nature and extent of damages and anticipated short and long term impacts;

(2) A description of the hazard which caused the damages, including any available information on frequencies, intensity, geographic extent, historical occurence;

(3) An overview of Federal, State and local land use or comprehensive development plans policies, programs and laws which are applicable to the impacted disaster area(s);

(4) An identification of potential hazard mitigation measures and options, including land use and construction practices that should be considered by all levels of government as part of the recovery and restoration process;

(5) Recommendations for redevelopment moratoria, conditions on grants or loans for restoring public facilities and infrastructure and any other measures necessary to insure that hazard mitigation opportunities are preserved and given adequate consideration, and

(6) Recommendations for long term considerations to be addressed by State and local applicants in the hazard mitigation plan prepared pursuant to this subpart. For flood disasters, the interagency hazard mitigation team report will take the place of the hazard mitigation survey report.

(d) *Activation.* Survey teams shall be activated for all presidentially declared disasters, except that, the Regional Director may determine not to activate a survey team when he/she determines that, due to the nature and extent of the disaster:

(1) Hazard mitigation opportunities are highly limited, and

(2) State and local hazard mitigation capabilities are adequate. Any determination not to activate a survey team shall be submitted to the Associate Director for concurrence.

(e) *Distribution of Survey Reports.* Survey reports shall be distributed in a timely manner to any agencies deemed appropriate by the Regional Director except that reports shall be distributed in all cases to the State and all local government units impacted by the disaster for use in their hazard mitigation planning activities. For flood disasters, hazard mitigation team reports shall be distributed in accordance with the provisions of the interagency agreement for post flood hazard mitigation planning and associated guidelines and procedures.

§ 205.405 Hazard Mitigation Plan Content.

(a) *Purpose.* The requirements for hazard mitigation planning set forth in this section are intended to complement the on-going land use management, building and development control practices of State and local governments. While the occurence of a disaster focuses attention on hazard problems and consequently creates an environment in which hazard mitigation measures are better understood and received, FEMA recognizes that the post-disaster setting is not the only or even the optimal time for managing vulnerability to hazards. State and local governments make decisions on a daily basis which influence vulnerability of the community to hazards. FEMA technical assistance and mitigation requirements, therefore, are oriented toward helping States and localities to develop hazard management capabilities and programs, as part of normal governmental functions, that will help to reduce current levels of hazard vulnerability and prevent new risks as States and communities grow and develop.

(b) *Requirements.* As a condition of any loans or grants provided under the Act, States and local governments shall—

(1) Evaluate the hazards in the areas in which the proceeds of the grants and loans are to be used;

(2) Take appropriate action to mitigate such hazards, including safe land use and construction practices and,

(3) Furnish evidence, in the form of a hazard mitigation plan or plan update prepared in accordance with the requirements of this subpart, that the hazards have been evaluated and appropriate action has been proposed or taken to mitigate such hazards.

(c) *Hazard Mitigation Plans.* A hazard mitigation plan is a logical or systematic identification of policies, programs, strategies and actions to be carried out by State and local governments to use the legal authorities, financial capabilities and political leadership available to reduce or avoid long term vulnerability to hazards. Hazard mitigation plans should include all the practicable measures available to limit hazard vulnerability. All States shall submit a hazard mitigation plan on behalf of the State and any appropriate local governments included in the disaster area within 180 days following the declaration of a presidential disaster unless—

(i) The Regional Director grants an extension not to exceed an additional 90 days, in which case the plan shall be submitted following the expiration of any extension or,

(2) The State and local governments currently have a written, published and officially adopted hazard mitigation plan or hazard mitigation element of a disaster assistance or comprehensive land use and development plan which, in the opinion of the Regional Director, substantially meets the requirements of this subpart.

(d) *Hazard Mitigation Plan Updates.* When the Regional Director determines that a State or local government has in effect a written, published and officially adopted hazard mitigation plan or hazard mitigation element of a disaster assistance or comprehensive land use and development plan which substantially meets the requirements of this subpart, the State or local government shall, as a condition of any financial assistance provided under the Act, review such plan(s) in the light of the current disaster and prepare an update to the existing hazard mitigation plan within 180 days following the presidential declaration of a major disaster, which evaluates the effectiveness of current and proposed mitigation measures and policies and adopts changes or improvements to current practices, where appropriate. Such plan updates shall be submitted to the Regional Director for review and approval.

(e) *Time Extensions.* In addition to the 90 day extension which may be granted by the Regional Director, any State may request additional time extensions required as a result of unusual circumstances. Requests for additional time extensions shall be submitted to the Regional Director who will forward such requests, along with his/her recommendation, to the Associate Director for approval.

(f) *Hazard Mitigation Plan Contents.* Hazard Mitigation plans or plan updates developed pursuant to section 406 or used by States and localities to meet the requirements of Section 406 shall include the following major elements:

(1) Evaluation of natural hazards in the declared disaster area. Hazard evaluation shall include—

(i) Any technical or descriptive information concerning the nature, severity, extent, frequency and historical occurrence of natural hazard events that can be expected to cause damage and loss to people and property, including assessment of the interrelationship of the various hazards to which the area is vulnerable, and

(ii) Analysis of hazard vulnerability trends and changes in vulnerability that can be expected to occur through time under current conditions of planning and hazard management. The hazard evaluation should incorporate and expand upon relevant information contained in the hazard mitigation survey report or interagency hazard

mitigation team report developed pursuant to § 205.405(c) (1) and (2) and should reference or incorporate any hazard analysis or hazard identification performed under any other FEMA funded program undertaken by the State or local government. Examples of the latter include hazard identification performed as part of a FEMA funded Hazard Identification/Capability Assessment/Multi-Year Development Plan (HICA MYDP) or FEMA funded hazard specific planning programs, such as landslide, hurricane preparedness or earthquake preparedness and mitigation programs;

(2) Description and analysis of current State/local hazard management policies/programs/capabilities. Many official policies or programs of State or local government influence development in hazard prone areas and contribute to either increasing or decreasing vulnerability to hazards. This analysis should review such things as—

(i) Land use planning and zoning practices;

(ii) Construction codes and building requirements;

(iii) Capital improvement programming;

(iv) Warning and evacuation systems;

(v) Hazard awareness and public information/education programs;

(vi) Public works programs for hazard control and damage prevention;

(vii) Fiscal policies; and

(viii) Any other laws, statutes or ordinances which affect public safety, protection of the environment or other issues related to hazard reduction, avoidance and mitigation. The analysis should determine the current effectiveness and adequacy of existing programs, policies and authorities for managing hazard vulnerability;

(3) Proposed hazard mitigation strategies, programs, and recommendations. Based upon the problems of hazard vulnerability defined in the hazard evaluation and the review of current programs, policies and capabilities for managing hazards, the plan shall propose a specific set of actions or measures for addressing each of the major current areas of need in the State or local hazard management program. For each of the functions or activities identified at § 205.405(e)(2) (i–viii), the plan or plan update should include proposed improvements, modifications or changes which would help to reduce or avoid vulnerability to hazards identified at § 205.405(e)(1). For each proposed new hazard mitigation strategy, program or action, the plan shall include an identification of—

(i) Anticipated completion dates or implementation schedules;

(ii) The Department, agency or official of State or local government responsible for implementation;

(iii) Anticipated costs of carrying out the recommendation, if any; and

(iv) The proposed source of funding.

(g) *Appropriate Actions.* Each hazard mitigation plan or plan update prepared and submitted in order to fulfill the requirements of this subpart shall identify one or more high priority recommendations contained in the plan or plan update which will be considered the minimum hazard mitigation actions the State or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation. These appropriate actions should be drawn from the proposed hazard mitigation programs, strategies and recommendations contained in the plan in accordance with paragraph (f)(3) of this section. The purpose of appropriate actions is to prevent future uneconomic costs for disaster assistance. As such, failure on the part of a State of locality to carry out appropriate actions in accordance with procedures and schedules established in the hazard mitigation plan, will result in the withholding of federal financial assistance for any future disaster damages which the Regional Director determines would not have occurred if the appropriate hazard mitigation actions had been taken.

(h) *Exception To The Requirement For Appropriate Actions.* FEMA may decide, based upon the nature and severity of any presidentially declared disaster, to waive the requirement that State and local applicants include appropriate actions in any hazard mitigation plan or plan update submitted in accordance with the requirements of this subpart. To obtain a waiver of this requirement, the State or local applicant must submit a request in writing to the Regional Director stating the reasons why a waiver is warranted. A waiver of this requirement will be justified if—

(1) There can be considered no reasonable likelihood, based upon the best technical information available, that the events which caused the disaster could occur again within a time frame or with a degree of severity that would justify the economic cost of reasonably available hazard mitigation measures, or

(2) There are no reasonably available techniques or actions which would prevent or reduce the damages should the events which caused the disaster occur again. Upon receipt of a request for a waiver of the requirement to identify appropriate actions as part of the hazard mitigation plan or plan update, the Regional Director shall review such request and make a recommendation to the Associate Director for final decision. The Associate Director shall notify the Regional Director in writing of his/her decision.

§ 205.406 Hazard Mitigation Plan Development and Approval.

(a) *Purpose.* This section sets forth procedures for ensuring that hazard mitigation plans or plan updates developed pursuant to this subpart are prepared in a timely manner following the declaration of a major disaster and that such plans reflect and incorporate, to the greatest extent possible, previous information and evaluations which will minimize work effort. It also includes standards for FEMA technical assistance and review and approval of hazard mitigation plans and plan updates.

(b) *Scoping Meeting.* Within 45 days following the declaration of a major disaster, the FHMC will hold a meeting with the SHMC and appropriate LHMC's for the purpose of developing a timetable and scope of work for the hazard mitigation plan or plan update. Topics to be covered at the scoping meeting include;

(1) A detailed briefing by the FHMC on the purpose and requirements of section 406, this subpart, and the hazard mitigation plan or plan update;

(2) Key hazard vulnerability or hazard mitigation issues that should be addressed by the hazard mitigation plan or plan update, including significant hazards and potential appropriate actions to be included in the plan, if any;

(3) The nature and extent of local applicant involvement in development of the plan or plan update, including—

(i) The extent to which the plan or plan update will focus upon State versus local hazard mitigation needs and actions, and

(ii) The division of responsibility and coordination required for development of the plan or plan update between the State and local applicants;

(4) A proposed timetable for development of the plan and interim outputs, including;

(i) Scheduling of technical assistance and progress review meetings;

(ii) State and local review and approval requirements and;

(iii) Dates for delivery, FEMA review/approval and publication and distribution by the State of the final plan or plan update. The SHMC should invite to the scoping meeting representatives of any other State agencies involved with public works, natural resources,

transportation or emergency management that, due to their mission, would appropriately be involved in the planning and implementation of hazard mitigation measures.

(c) *Specific Hazard Mitigation Projects.* At the scoping meeting Federal, State and local hazard mitigation coordinators should identify any specific hazard mitigation project actions that require further investigation as part of the Section 406 planning process or that should be initiated immediately as part of the disaster recovery process. Specific hazard mitigation projects will be drawn from—

(1) Interagency hazard mitigation team reports or survey reports;

(2) Flood plain management and hazard mitigation reviews performed as part of disaster survey reports, and

(3) Any other background information obtained from damage assessments or field reconnaissance. To the extent possible, federal agencies and State and local applicants should attempt to utilize the recovery resources available from all sources to implement identified specific projects as part of the recovery process.

(d) *Progress Reporting and Review.* The FHMC will monitor the development of hazard mitigation plans or plan updates to ensure that adequate progress is being made in conformance with the established schedule. Reporting by the State should be in the form of a brief written progress report submitted bimonthly following declaration of the disaster by the SHMC to the Regional Director. The Regional Director may schedule, in consultation with the State, other meetings or reports he/she deems necessary to ensure adequate monitoring. If, at any time during the development of the hazard mitigation plan or plan update, the Regional Director determines that the State or local applicants are not making adequate progress in developing the plan relative to established time schedules, he/she may, with the concurrence of the Associate Director, suspend payments or processing for any public assistance projects currently under consideration until hazard mitigation planning is on schedule. In suspending the processing of public assistance grant applications or payments, the Regional Director shall notify the State of his/her decision to do so and shall indicate what specific progress in development of the hazard mitigation plan is required in order to resume processing of grant applications and payments.

(e) *Technical Assistance.* The Regional Director, through the SHMC, will provide technical assistance to eligible grant applicants for planning and implementation of specific hazard mitigation projects or development of hazard mitigation plans and plan updates. The Regional Director may also provide mission assignments to federal agencies for the purpose of obtaining specialized kinds of technical assistance that would not otherwise be available to State or local applicants for development of hazard mitigation plans and plan updates.

(f) *Plan Certification.* In addition to the requirements contained in § 205.405 of this subpart, all hazard mitigation plans or plan updates forwarded to the Regional Director for approval as evidence of compliance with section 406 of the Act shall be signed and certified by the governor or his authorized representative as an officially adopted plan or policy of the State. In addition, if a hazard mitigation plan or plan update includes actions which will be the responsibility of substate or local jurisdictions to carry out, the plan or plan update shall include a description of the extent of local participation in the planning process.

(g) *Plan Approval.* Upon receipt of a hazard mitigation plan or plan update, the Regional Director shall acknowledge in writing such receipt to the governor or the appropriate agency or representative of State government. Within 45 days of receipt of the plan, the Regional Director shall provide written comments to the State with a determination of whether or not the plan satisfies the requirements of this subpart. If the plan or plan update satisfies the requirements of this subpart, the written comments to the State should include indication that the plan or plan update is approved. If the plan or plan update does not meet the minimum requirements of this subpart, it will not be approved and the Regional Director shall provide to the State in writing specific information concerning the portions of the plan or plan update that must be modified, expanded or improved in order for the plan to be approved. If the plan or plan update is not approved, the Regional Director, after consultation with the Associate Director, shall notify the Governor of his/her authorized representative in writing that the State has 30 days in which to bring the plan or plan update into compliance with this subpart, after which time—

(1) The processing of all pending public assistance grant applications or payments for the presidential disaster declaration as a result of which the unapproved hazard mitigation plan or plan update has been prepared may be suspended pending the correction of deficiencies in the plan, and

(2) No new public assistance grant applications will be accepted for any subsequent presidential disaster declarations in the disaster area covered by the unapproved plan. The prohibitions of § 205.406(g) (1) and (2) shall be removed upon submittal by the State of a hazard mitigation plan or plan update which meets the requirements of this subpart and is approved by the Regional Director.

(h) *Appeals.* Appeals may be made to the suspension of assistance for failure to develop or submit a hazard mitigation plan in accordance with the requirements of this subpart. Such appeals shall be made in accordance with the procedures and criteria for appeals found at 44 CFR part 205, Subpart H.

(i) *Implementation and Monitoring.* From time to time, but not less than annually, FEMA will review State and local progress in the accomplishment of actions, recommendations or strategies contained in the approved hazard mitigation plan or plan update. The Regional Director may require the State or local applicants to provide progress reports on the implementation of hazard mitigation actions as necessary. If, as a result of any review of progress, the Regional Director, in consultation with the Associate Director, determines that any appropriate action contained in an approved hazard mitigation plan has not been implemented in accordance with the plan and its established time schedule, he/she may, after providing 30 days notice in writing of the intention to do so—

(1) Suspend processing of applications for assistance under section 402 of the Act from previous disaster declarations where the restored facilities would be at risk for failure to carry out the appropriate actions included in the plan that are not on schedule until such time as the appropriate actions are on schedule or completed, and

(2) Notify the State that no future applications for assistance under section 402 for any subsequent presidential disaster declarations will be approved for the facilities and in the area(s) covered by the appropriate actions that have not been carried out in accordance with the plan.

(j) *Amendments to Hazard Mitigation Plans.* The State may propose to the Regional Director at any time amendments to hazard mitigation plans or appropriate actions submitted in fulfillment of the requirements of this subpart. Such proposed amendments shall include a brief explanation of the reasons for the amendment. The Regional Director shall provide his/her

approval of amendments to the State in writing within 45 days of receipt of a request, and shall notify the Associate Director of any amendments approved.

§ 205.407 Funding Hazard Mitigation Measures.

(a) *Purpose.* Eligible costs for the reconstruction of damaged public facilities eligible for assistance pursuant to section 402 of the Act are generally limited to the costs of reconstructing to the predisaster design of the damaged facility, and in accordance with currently applicable codes, specifications and standards. In many cases, however, permanent repairs, alterations, or new construction to predisaster design may not result in facilities or structures which are safe from identified hazards. Alternate actions available include relocation to non-hazard prone areas, restoration in conformance with updated construction practices or standards, restoration in conjunction with measures or improvements which will make the facility less prone to subsequent damage (disaster proofing measures) or withholding of federal funding for the proposed work. This section covers criteria for funding disaster proofing measures in excess of the cost of repairing facilities in accordance with their predisaster design and in accordance with applicable codes, specifications and standards.

(b) *Disaster Proofing.* In restoring damaged or destroyed facilities with grant assistance for permanent work under section 402 of the Act, the Regional Director may authorize disaster proofing not required by applicable codes, specifications and standards when in the public interest. Disaster proofing consists of any modification or improvement in design of a facility or system of which the damged facility is a part, or any protective measure or technique, whether or not it is an integral part of the damaged facility, which will reduce the potential for future damages to the facility. In approving requests for disaster proofing, the Regional Director shall require that the following criteria be met:

(1) The disaster proofing measures must be judged by the Regional Director to be effective in substantially alleviating or eliminating recurrence of damage done to the facility by the major disaster,

(2) The measures must be feasible from the standpoint of sound engineering and construction practices,

(3) The measures must be cost-beneficial in protecting the federal investment, meaning that the total costs of the measures must be less, over the useful life of the structure (using a discounted rate), than the future damages that can be reasonably anticipated; further, the measures must be cost-effective, meaning that they must be less costly overall than any other measures that would be eligible as disaster proofing;

(4) The measures must be consistent with applicable NFIP standards (44 CFR Part 59, et seq.), Floodplain Management Regulations (44 CFR Part 9), and (where applicable), Environmental Considerations (44 CFR Part 10); and

(5) The cost to FEMA for disaster proofing measures shall not exceed a small percentage of the eligible project cost. The applicant may contribute any amount necessary to completely fund any disaster proofing measure that meets the other criteria of this paragraph.

(d) *Project Administration.* As a condition of approval of a project application for any project funded pursuant to Section 402 of the Act, and subsequently for approval of a voucher for final payment, the Governor's Authorized Representative and the Regional Director shall require documentation of required hazard mitigation measures, including compliance with applicable land use regulations and construction standards. In making final inspection reports, Federal and State inspectors shall verify compliance by the applicant with approved hazard mitigation standards.

Dated: April 4, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs And Support.

[FR Doc. 86-8479 Filed 4-17-86; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 179

Irradiation in the Production, Processing, and Handling of Food; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 81N-0004]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to permit additional uses of ionizing radiation for the treatment of food. These regulations: (1) Permit manufacturers to use irradiation at doses not to exceed 1 kiloGray (kGy) to inhibit the growth and maturation of fresh foods and to disinfect food of arthropod pests, (2) permit manufacturers to use irradiation at doses not to exceed 30 kGy to disinfect dry or dehydrated aromatic vegetable substances (such as spices and herbs) of microorganisms, (3) require that foods that are irradiated be labeled to show this fact both at the wholesale and at the retail level, and (4) require that manufacturers maintain process records of irradiation for a specified period and make such records available for FDA inspection. These regulations are promulgated on the agency's initiative and are necessary to permit the safe use of ionizing radiation. This document responds to comments on the February 14, 1984, proposed rule (49 FR 5714).

DATES: Effective April 18, 1986; objections by May 19, 1986.

ADDRESS: Written objections and request for a hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORAMTION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Under section 409 (b) and (d) of the Federal Food, Drug, and Cosmetic Act (the act), the Secretary may approve a food additive petition from an interested person or may propose the issuance of a food additive regulation upon the Secretary's own initiative (21 U.S.C. 348 (b) and (d)). It is less common for FDA, acting as the Secretary's delegate, to propose and then establish a regulation itself, than to respond to a sponsor's petition. In the case of food irradiation, FDA had, before 1981, approved several food additive petitions for the use of various sources of radiation on certain foods and food-packaging materials (21 CFR Part 179). Subsequent to these approvals, an FDA committee evaluated testing criteria that would be necessary to support the safety of food irradiation for various uses.

In the **Federal Register** of March 27, 1981 (46 FR 18992), FDA published an advance notice of proposed rulemaking that announced the availability of the Bureau of Foods' (now the Center for Food Safety and Applied Nutrition) Irradiated Food Committee (BFIFC) Report (Ref. 1), which outlined a course of action for assuring the safety of irradiated foods, and requested comments on the overall approach.

In the **Federal Register** of February 14, 1984 (49 FR 5714), FDA published a proposed rule that would: (1) Establish general provisions for food irradiation, (2) permit the use of food irradiation at doses not exceeding 1 kiloGray (kGy) (100 kilorads; 100 krad) [1] for inhibiting the growth and maturation of fruits and vegetables and for insect disinfestation of food, (3) allow irradiation to be used for microbial disinfection of certain dried spices and dried vegetable seasonings at a dose not to exceed 30 kGy (3 Mrad), (4) eliminate the current irradiated food labeling requirements for retail labeling, and (5) replace the current sections (21 CFR 179.22 and 179.24) dealing with the irradiation of food with new §§ 179.25 and 179.26 (21 CFR 179.25 and 179.26). The proposal responded to comments on the advance notice of proposed rulemaking.

Apart from that ongoing rulemaking, FDA has approved a number of food additive petitions to provide for the safe use of gamma radiation at doses up to 10 kGy (1 Mrad) to control insect infestation and microbial contamination in dried herbs, spices, and vegetable seasonings (48 FR 30613, July 5, 1983; 48 FR 46022, October 11, 1983; 49 FR 24988, June 19, 1984; 50 FR 15415, April 18, 1985) and in dry enzyme preparations (50 FR 24190, June 10, 1985). FDA also issued a final rule on July 22, 1985 (50 FR 29658) which amended 21 CFR 179.22(b) in response to a petition to provide for the safe use of gamma radiation at doses up to 1 kGy (100 krad) to control *Trichinella spiralis* in pork.

The act requires that a food additive, including a source of radiation used to process food, be shown to be safe under the proposed conditions of use before use of the food additive can be approved. That is, the agency must be assured with reasonable certainty that no harm will result from irradiation of food. A source of radiation is specifically defined as a food additive in section 201(s) of the act (21 U.S.C. 321(s)). The Senate report on the Food Additives Amendment of 1958 made clear that "[s]ources of radiation (including radioactive isotopes, particle accelerators and X-ray machines) intended for use in processing food are included in the term 'food additive' as defined in this legislation." S. Rept. 2422, 85th Cong., 2d Sess. 63 (1958).

Section 409 of the act lists the criteria which must be considered by the agency before a food additive regulation is issued. The statute does not prescribe what safety tests should be performed but leaves that determination to the discretion of scientists. The definition of safety, as drawn from the legislative history of the Food Additives Amendment of 1958, has been codified in 21 CFR 170.3(i) as follows:

(i) "Safe" or "safety" means that there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended condition of use. It is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of the use of any substance. Safety may be determined by scientific procedures or by general recognition of safety. In determining safety, the following factors shall be considered:

(1) The probable consumption of the substance and of any substance formed in or on food because of its use.

(2) The cumulative effect of the substance in the diet, taking into account any

[1] The Systeme Internationale (SI) unit for expressing the amount of absorbed radiation dose is the Gray (joules/kilogram, abbreviated GY). An older unit commonly used is the rad. The equivalent value in rads (100 rad=1 Gy) will be enclosed in parentheses when referring to the amount of absorbed radiation. The prefixes kilo (k) and mega (M) represent a thousandfold and a millionfold, respectively. Thus, kilorad means a thousand rads and a megarad means a million rads.

chemically or pharmacologically related substance or substances in such diet.

(3) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food and food ingredients, are generally recognized as appropriate.

In passing the Food Additives Amendment of 1958, Congress recognized that it is impossible to establish with complete certainty the absolute harmlessness of any chemical substance. The concept of safety used in the amendment involves reducing uncertainty about the safety of an additive to the point where the agency can reasonably conclude that no harm will result from its proposed use.

This objective can be achieved in a variety of ways. To determine whether consumption of a substance is safe, the agency considers the amount and identity of the substance ingested in light of what is already known regarding its toxicity. Ordinarily, animal feeding tests are essential for assessing toxicity of a substance. Not all situations require the same amount or type of testing, however, to determine whether use of an additive is safe. The degree of effort expended in reducing uncertainty about the safety of an additive must relate in some way to the likelihood that use of the additive poses a potential health risk to the public. Testing that is unlikely to provide information that would reduce uncertainty regarding safety should not be required. To do otherwise would waste scarce scientific resources that could be used for more productive purposes.

II. Comments

The agency received over 5,000 comments on the proposal. Many of the comments simply stated opinions for or against permitting food irradiation or requiring special labeling but identified no substantive issues to which the agency can respond. For example, some comments expressed concern that food might become radioactive, but none provided factual support. Other comments acknowledged that irradiation of food will not make the food radioactive. The agency believes that the proposal adequately addressed the issue of induced radioactivity in food (see 49 FR at 5716). Because no evidence has been submitted to contradict FDA's finding that the irradiation of food does not cause the food to become radioactive, no further discussion of this issue is necessary.

Many of the comments were concerned about the formation and the safety of radiolytic products, and the effect of irradiation on nutrients in food. A majority of those comments stated that more studies were needed because the long-term effects of these radiolytic products have not been ascertained with enough certainty to justify the conclusion that the use of irradiation is safe. The substantive comments and FDA's response to each are discussed below.

A. Safety

Before responding to the substantive comments relating to safety, the agency believes it would be useful to explain again its safety assessment of food irradiation and its conclusions concerning the safety of foods irradiated in compliance with this regulation. A summary of FDA's position on safety is set forth below.

In the proposed rule, the agency stated "* * * that the safety of food irradiation below 1 kGy (100 krad) has been established * * * because: (1) Irradiation will not make the food radioactive, and thus cannot expose the consumer to radiation; (2) the chemical differences between irradiated foods processed at these doses and nonirradiated foods are too small to affect the safety of the foods; (3) food irradiated at doses up to 1 kGy (100 krad) will have the same nutritional value as similar foods that have not been irradiated; and (4) the balance between microbial spoilage organisms and pathogenic organisms is not adversely affected by radiation doses below 1 kGy (100 krad)" (49 FR 5718).

The agency has followed the same general procedures in the development of regulations for the use of sources of radiation as are followed in the development of regulations for other food additives. Under the act, the agency's primary responsibility is to determine that the additive is safe under the proposed conditions of use. Since the 1960's when the first petition for the treatment of food with radiation sources was submitted, the agency has been confronted with the question of what test procedures are appropriate to establish reasonable certainty of no harm for use of radiation sources in the treatment of food. In the absence of adequate data on the chemical changes in food treated with radiation and information on the nutritional quality of such food, FDA concluded that petitioners should submit long-term animal feeding studies to demonstrate the "wholesomeness" of the irradiated food. In those instances where petitioners have provided adequate chemical and nutritional data to the agency, FDA has not required petitioners to submit long-term animal feeding studies. For example, FDA has issued regulations authorizing the use of x-rays for inspection of food, microwaves for heating food, and ultraviolet radiation for treating food based on chemical analyses (see 21 CFR 179.21, 179.30, and 179.39, respectively).

In 1979, FDA established its Bureau of Foods Irradiated Food Committee (BFIFC) to review the existing agency policy concerning the irradiation of foods. BFIFC's main task was to make recommendations regarding the establishment of those toxicologic testing requirements appropriate for assessing the safety of irradiated foods. BFIFC's recommendation focused on making the degree of testing compatible with the potential risk as indicated by the level of anticipated human exposure. BFIFC recognized that safety assessments of irradiated food should be based on: (1) Projected levels of human exposure to the food; (2) estimates of the identify, amount, and potential toxicity of new chemical constituents generated in the food by the irradiation process; and (3) state-of-the-art sensitive toxicological tests. BFIFC completed its review and submitted its final report in July 1980 (Ref. 1).

BFIFC recognized that no single approach provided sufficient data to estimate the percentage of food consumption that might consist of irradiated food. Hence, in projecting human exposure to irradiated food, BFIFC used estimates of total food consumption, dietary items proposed for irradiation, and the percent of each dietary item which may be irradiated. Using a rough estimate based on these factors, BFIFC suggested that as much as 40 percent of the total diet could be irradiated, but anticipated that actual human exposure would not exceed 10 percent of the diet.

Further, the committee considered those chemical constituents generated by irradiation, also known as radiolytic products. BFIFC assumed that some radiolytic products may be unique to irradiated foods, and created the term "unique radiolytic products" (URP's) to mean substances not known to be present in nonirradiated food. However, BFIFC recognized that scientists do not know the extent to which these substances, although characterized as URP's, may actually be present as common constituents of the human diet.

BFIFC reviewed the available literature dealing with radiation chemistry, the identification and quantification of substances produced in foods as a result of irradiation, and found that the amount of radiolytic products generated is primarily dependent upon the amount of energy

absorbed by the food. Based on data showing how much chemical change is likely to be caused by a given amount of radiation energy, BFIFC concluded that irradiation of food at 1 kGy (100 krad) would generate approximately 30 parts per million (ppm) of radiolytic products. Experiments have shown that very few of these radiolytic products are unique to irradiated foods; approximately 90 percent of the radiolytic products identified by BFIFC are known to be natural components of food (Ref. 1). BFIFC found the remaining 10 percent of the radiolytic products to be chemically similar to known natural food components. Because of this chemical similarity, those radiolytic products are likely to be toxicologically similar also. Because natural components of food are not well characterized at the parts per million level, some radiolytic products assumed by BFIFC to be unique may actually be natural components of foods. However, even if 10 percent of the radiolytic products are unique, their cumulative concentration in food irradiated at 1 kGy (100 krad) would be only 3 per million, one-tenth the concentration of 30 parts per million for all radiolytic products. Moreover, the concentration of any single URP will probably be less than 1 part per million for food irradiated at 1 kGy (100 krad). Because different portions of a food being irradiated will receive different doses, the average radiation dose absorbed by the food will necessarily be less than the maximum permitted dose. Therefore, the concentration of URP's generated in food from irradiation should be even lower than the upper bound estimate calculated by BFIFC.

BFIFC concluded that because of the extremely low potential concentration of individual URP's in foods irradiated at doses below 1 kGy (100 krad), and because any URP's are likely to be toxicologically similar to other food components, it would be virtually impossible to detect potential toxicological properties of these substances. The current state-of-the-art toxicity tests are not sensitive enough to detect the potential toxicity of URP's at these low levels unless the URP's are far more potent than experience in the radiation chemistry of foods and in toxicology would suggest.

Because the potential concentration of URP's in irradiated food is low, BFIFC concluded that food irradiated at doses not exceeding 1 kGy (10 krad) is wholesome and safe for human consumption, even where the food that is irradiated may constitute a substantial portion of the diet. Consequently, the committee recommended that foods irradiated at doses below 1 kGy (100 krad) be considered safe for human consumption without the requirement of toxicological testing. BFIFC based this recommendation on radiation chemistry and on the anticipated low levels of human exposure to any URP's generated in irradiated foods.

The committee further concluded that a food (e.g., nutmeg) that comprises only a small fraction of the human diet (i.e., no more than 0.01 percent of the diet) and that is irradiated at doses up to 50 kGy (5 Mrad) would necessarily contribute far fewer radiolytic products to the daily diet—approximately 20 times less—than a food representing a significant fraction of the diet (e.g., 10 percent) irradiated at 1 kGy (100 krad). Consequently, BFIFC recommended that foods comprising no more than 0.01 percent of the daily diet and irradiated at 50 kGy (5 Mrad) or less also be considered safe for human consumption without toxicological testing. BFIFC based this recommendation on radiation chemistry and the anticipated low levels of human exposure to any URP's generated in irradiated foods.

The agency agreed with the scientific rationale and conclusion reached by BFIFC that an adequate margin of safety could be demonstrated for irradiated foods without the requirement of toxicological testing and adopted its recommendations concerning the safety of foods irradiated at the proposed dosage levels (March 27, 1981; 46 FR 18992).

Subsequently, in 1981, FDA's Bureau of Foods established the Irradiated Foods Task Group to review all available toxicological data concerning foods treated by irradiation. The major objectives of this Task Group were to compile and summarize the toxicology data pertaining to irradiated foods, identify any consistencies with respect to adverse findings, look for patterns or trends in response between studies, and to summarize the experimental results at the end of the review (Refs. 2 and 3).

The data review proceeded in three phases. In phase I, all relevant toxicology studies were identified from FDA files and from the open literature. In phase II, 441 of these studies were obtained in hard copy and summarized. These summaries categorized studies as: (1) "Accepted," if on initial examination the study appeared to be reasonably complete; (2) "accepted with reservation," if the testing, on initial summary review, appeared acceptable but had some serious deficiencies interfering with interpretation of the data; or (3) "rejected," if there were inadequacies of the experimental design or data collection, or if dietary problems existed in the study that would prevent a valid evaluation. In phase III, 69 studies that either raised questions concerning the possibility of adverse effects or that appeared to support a conclusion that the irradiated food studied is safe were examined in detail and reported (Ref. 4).

Based on its examination of all the data, the Task Group concluded that studies with irradiated foods do not show adverse toxicological effects. However, the Task Group further concluded that traditional toxicological testing of food irradiated at doses below 1 kGy (100 krad) cannot be expected to provide meaningful answers to toxicity questions regarding such irradiated foods. The Task Group based this conclusion on several major reasons: (1) Nutritional imbalances created in the test animal fed high levels of irradiated or nonirradiated foods would tend to mask any potential toxicological manifestations; (2) the low concentration of any potentially toxic radiolytic products in the irradiated foods would prevent significant exaggeration of the amount of radiolytic products in a test diet; and (3) such toxicological testing is currently too insensitive to measure toxicity because the concentrations of URP's potentially present in the irradiated foods tested are simply too low. Based on its review of all studies, including those which tested food irradiated at doses more than an order of magnitude higher than 1 kGy (100 krad), the Task Group agreed with BFIFC's conclusion that there was an adequate margin of safety for foods irradiated below 1 kGy (100 krad). Hence, the Task Group also agreed that toxicology tests on foods irradiated at 1 kGy (100 krad) or below are not needed to support a conclusion that such foods are safe.

Based on the findings, rationale, and conclusions of BFIFC and the Task Group, FDA concludes that food irradiated at doses not exceeding 1 kGy (100 krad) is safe for human consumption. The agency further concludes that use of this level of irradiation should be exempt from requirements for toxicological testing because such testing would not be able to measure any toxicological properties of radiolytic products present in irradiated foods. In addition, the agency concludes that irradiation of dry or dehydrated aromatic vegetable substances is safe for human consumption at higher doses. The agency has determined that irradiation at doses no higher than 30 kGy (3 Mrad)

will be adequate to accomplish the intended microbial disinfection of dry or dehydrated vegetable substances. The agency emphasizes that although toxicological data may sometimes be helpful in evaluating the safety of irradiated foods, such data are not scientifically necessary for determining the safety of radiation for the uses and doses encompassed by this regulation.

In addition to studies available in the published literature, the U.S. Department of Agriculture (USDA) has made available through the National Technical Information Service (49 FR 40623; October 17, 1984) final reports of certain contracted animal toxicological studies of radiation-sterilized chicken and reports on chemical changes in food caused by irradiation. The agency has reviewed studies involving mice and dogs fed radiation-sterilized chicken meat and concludes that these studies do not show any treatment-related effects (Refs. 5 and 6). These studies are discussed in further detail in the responses to those comments which reference the USDA studies.

1. Radiolytic Products

1. Many comments expressed the opinion that the radiolytic products produced during irradiation would made the food harmful. Some comments stated that the radiolytic products are free radicals and that ingestion of these free radicals would be harmful. Other comments stated that the free radicals may later form toxic substances.

The agency disagrees that free radicals or toxic substances will be produced in food at unsafe levels under the conditions prescribed by this rule. The issue is not whether free radicals, hypothetically, can later form toxic substances, but whether the formation of a toxic substance is sufficiently probable to raise questions about the safety of the irradiated food. Although the generation and subsequent reaction of free radicals comprise the major route by which radiolytic products are formed, such reactions are also common during conventional food processing and storage operations. As was discussed above, substances that are chemically similar to radiolytic products are often formed or are present in foods that are not irradiated.

The important issue the agency must consider with regard to radiolytic products is the probability that a toxic radiolytic end product may be formed and whether such a product would be present in sufficient amounts to make the food unsafe. The agency has no evidence to cause it to change its position that the chemical differences between foods irradiated at the doses allowed by this regulation and nonirradiated foods are too small to cause concern about the safety of the irradiated foods.

2. Some comments expressed the opinion that irradiated foods are unsafe because ingestion of irradiated foods may result directly in toxic free radical and peroxide formation within the body.

The agency disagrees. Although irradiation produces free radicals as reactive intermediates in the food itself, the high water content of all fresh food provides a medium for their rapid degradation after irradiation. Thus, they are not likely to persist or be present at all in food by the time that food reaches the consumer. However, irradiated dry spices and seasonings are examples of foods in which free radicals are known to persist for long periods of time. Nonetheless, the manner in which these foods are used—as ingredients in other foods that contain water—provides a means for rapid dissipation of the free radicals, thereby precluding their ingestion.

While peroxides are sometimes formed in irradiated foods, they are also formed in foods that are not irradiated. The agency has no evidence to suggest that irradiated foods would be metabolized differently from nonirradiated foods and thus form unique or toxic free radicals or peroxides within the body. Therefore, the agency believes that concerns about the safety of irradiated foods as expressed in these comments are unfounded.

3. One comment stated that "[a]ny preservation of foodstuffs by irradiation at any dose may be unwise," and that gaseous oxygen from air gives rise to free radicals, peroxides, and hydroperoxides. The comment also stated that increased concentration of hydrogen peroxide ordinarily results from irradiation. The comment noted that "[t]he addition of hydrogen peroxide to food as a preservative has been prohibited in a number of countries, notably Japan, as a contributor to carcinogenesis."

The formation of detectable quantities of hydrogen peroxide, organic peroxides, and hydroperoxides during irradiation of foods in the presence of oxygen is well documented, and food processors normally try to minimize contact of their products with air during processing and packaging. Peroxides result from free radical chemistry, as discussed earlier, between oxygen and the primary radiolytic products from the carbohydrates, fats and oils, and water present in food. The potential biological consequences of the thermal degradation of the intermediate peroxides and their reactions with the multitude of food components have been addressed by a number of researchers (Refs. 7, 8, and 9).

FDA considered the potential carcinogenicity of hydrogen peroxide in its final rule permitting the use of hydrogen peroxide as an indirect food additive for sterilizing polyethylene food contact surfaces used for food packaging (46 FR 2341; January 9, 1981). The agency had specifically addressed a Japanese report of a bioassay of hydrogen peroxide performed with C57B mice in which the authors had indicated that the chemical may have caused duodenal cancer. Upon review and after consultation with the authors of the study, the agency stated that the evidence was insufficient to conclude that hydrogen peroxide is a carcinogen (46 FR 2341; January 9, 1981).

In that document, the agency also considered the issue of human exposure to hydrogen peroxide in food and concluded that milk packaged in materials sterilized by hydrogen peroxide would contain hydrogen peroxide at a level no greater than 100 parts per billion at the time of packaging. Moreover, after 24 hours, the hydrogen peroxide concentration would fall to about 1 part per billion, i.e., more than 99.9 percent of the hydrogen peroxide will no longer be present in the food.

Similar considerations leads the agency to conclude that any hydrogen peroxide produced during irradiation of fruits and vegetables or meats in compliance with this final rule would be rapidly degraded to negligible levels by natural enzymes and natural antioxidants in the food. Furthermore, any residual hydrogen peroxide, if present, would be considerably less than that encountered ordinarily in foods and environmental sources.

Organic hydroperoxides, formed by reaction of radicals resulting from reaction of oxygen with primary radiolysis products, are both thermally and chemically unstable and decompose to various aldehydes, ketones, alcohols, and hydrocarbons which constitute the primary radiolytic end products also identified as components of both unprocessed and conventionally processed foods. The yields of these substances formed under the conditions of this regulation are sufficiently low as to raise no concerns regarding safety.

Finally, microbiological studies that have reported toxic effects of irradiated aqueous sugar solutions in which peroxides and peroxo radicals are generated are discussed in paragraphs 21 and 22 of this preamble. The agency

has concluded that these studies are inappropriate models for assessing the safety of irradiated foods.

4. Some comments stated that no radiolytic products are unique and noted that the U.S. Army Natick Laboratory found no unique products in irradiated meats. These comments indicated that the term "unique" is misleading and should not be used.

The BFIFC report used the term unique radiolytic products (URP's) to describe substances produced in food during irradiation which have not been shown to be present in nonirradiated food. The BFIFC report recognized, however, that substances characterized as URP's may be normal minor constituents in the human diet that have simply not been detected through routine analysis of nonirradiated food.

As stated in the proposal, the agency agrees that some radiolytic products assumed to be unique may well be natural or common components undetected in nonirradiated food. However, it is impossible to demonstrate with absolute certainty that that will always be the case for all radiolytic products. Therefore, the agency cannot be certain that all radiolytic products are normal components of the human diet. To be prudent, the agency has assumed, for purposes of safety assessment, that some minor radiolytic products present may not be normal components of the human diet, and, thus, may be unique to the process. Based upon such conservative assumptions, the agency concludes that the amount of potential URP's would be so low as not to pose a safety problem.

5. One comment asked, "what happens to pesticide residues on produce when they undergo irradiation treatment? What are the health risks to humans?"

A pesticide chemical, like any other chemical component of food, will possess a certain level of sensitivity to ionizing radiation. The degree of sensitivity of a pesticide chemical to the primary ionizing energy and to chemical reaction with primary radiolytic products from other constituents of a food matrix will depend on the molecular structure of the pesticide. As is the case with other chemical components of a food, the total yield of radiolytic products from irradiation of any given pesticide will be a function of the amount of pesticide present, as well as its sensitivity to radiation.

The BFIFC estimated that the sum of all radiolytic products produced by irradiation at 1 kGy (100 krad) would be no more than 30 parts per million in food. This means the cumulative concentration of all radiolytic products from a pesticide residue would correspond to a concentration of less than 30,000 times smaller than the concentration of the pesticide residue itself. Because such low levels of pesticide residues are expected in food, the agency believes that the total amount of radiolytic products from a pesticide chemical that may be consumed from foods irradiated in compliance with this regulation at doses below 1 kGy (100 krad) will be virtually nil. Therefore, the agency concludes that the potential toxicity of each radiolytic product from a pesticide chemical residue on foods that are irradiated would be negligible and that such pesticide residues do not pose a hazard to health.

2. Spices

6. One comment stated that foods such as spices comprise more than 0.01 percent of the daily diet and that the proposed rule was inconsistent with BFIFC's recommendation that irradiation of foods constituting less that 0.01 percent of the diet be considered safe up to 50 kGy (5 Mrad).

The agency agrees that spices, in total, may constitute more than 0.01 percent of the daily diet. The agency has estimated a probable intake of dried spices and culinary herbs of up to 3 grams per person per day. For the general population, this constitutes 0.1 percent of the total diet of 3 kilograms.

The comment was apparently confused by terminology in the BFIFC report recommending that a "food class" which contributes 0.01 percent or less to the daily diet be considered safe for irradiation at doses up to 50 kGy (5 Mrad). The 0.01 percent in the recommendation was intended to refer to the dietary contribution of an individual spice (e.g., nutmeg or turmeric) as a "food class," not all spices as a "food class." Because radiolytic products from different spices are likely to be different, there is no reason to add the amount of radiolytic products from one spice, such as nutmeg, to another spice, such as turmeric, when evaluating safety. The intent of BFIFC's recommendation was not to set a precise dietary percentage limit of 0.01 percent but rather to acknowledge that the amounts of radiolytic products that would potentially be consumed from irradiated dried spices and seasonings are so small that such irradiated foods can be considered safe as ordinarily used. Neither the proposal nor the final regulation permitting the irradiation of spices at 30 kGy (3 Mrad) is inconsistent with BFIFC's recommendation.

7. Some comments on the proposed rule expressed concern that large amounts of irradiated spices and seasonings used by certain ethnic groups in their food would exceed safe consumption levels. The comments provided no information on which to base such a concern.

The agency recognizes that dietary patterns differ between groups of people and that certain groups consume more spices and seasonings than do other groups. Nevertheless, the agency has no reason to believe that any ethnic group will consume any irradiated spice or seasoning in amounts that would raise any safety concern, even considering dietary variations among ethnic groups. A single spice or seasoning would still be a minor ingredient in the diet. Moreover, as discussed in the previous response, the radiolytic products from one spice are different from those of another spice; therefore, their effects, if any, will not be cumulative.

8. The agency invited comments on the list of spices that is considered appropriate for irradiation. Comments recommended including those substances listed in § 182.10 *Spices and other natural seasonings and flavorings* (21 CFR 182.10), as well as other spices, seeds, and herbs commonly used as minor flavoring ingredients, and including teas and other vegetable seasonings. Some comments also stated that a specific list of spices was unnecessary and a phrase such as "herbs, seeds, and spices" should replace the individual listing of spices. One comment stated that to prohibit treating a spice mix because one minor ingredient is not on the list is not logical and suggested an alternative approach of granting overall approval to seasoning and flavoring substances currently considered generally recognized as safe because their safety would not be significantly changed by irradiation.

The agency disagrees that natural flavors should necessarily be included in the list and is not permitting the use of irradiation for natural flavors at this time. Natural flavors are components of food ingredients that have undergone some processing. Such flavors may be in solid or liquid form. The agency's conclusion that minor ingredients such as dried spices and seasonings may be irradiated safely was based on the fact that the amount of chemical change in the solid, dry state of a food is less than would occur when substantial portions of liquid are present and that dry ingredients would not support the growth of microorganisms that might survive irradiation. The agency has no

information from which to conclude that flavors in liquid form can be irradiated safely. Also, the agency has no information indicating that processed flavors require treatment for disinfection. Anyone interested in pursuing this matter further may do so by submitting an appropriate food additive petition.

The agency agrees that a specific list of spices and seasoning agents is unnecessary. Collective terms are used to describe different groups of these minor ingredients and such terms may be more appropriate than a detailed listing. Although herbs may be used for both culinary and medicinal purposes, a food additive regulation applies only to the irradiation of culinary herbs. Therefore, the agency is now modifying the regulation to permit irradiation of dry or dehydrated aromatic vegetable substances: culinary herbs, seeds, spices, teas, and vegetable seasonings.

9. Some comments apparently assumed that the proposed regulation would not permit irradiation of spice blends and requested modification of the regulation to permit such irradiation.

The issue is twofold: (1) Whether blends can be irradiated, and (2) whether the regulation authorizes the irradiation of enough ingredients to make the irradiation of commercial blends practical. The regulation does not preclude the irradiation of spice blends. The agency recognizes that the limited number of spices listed in the proposed rule would have prohibited blends containing other ingredients. As explained above, the agency agrees that the description of the substances that may be irradiated as dry or dehydrated aromatic vegetable substances should be more comprehensive than that listed in the proposed rule. In addition, salt and other adjuvants or minor ingredients (such as anticaking and free flow agents) may be used in a blend of seasoning substances. Under such limited conditions of use, the irradiation of these minor dry ingredients would pose no concern. Therefore, the agency is describing in this final rule the spices and seasonings in general terms and is explicitly authorizing the use of blends of aromatic vegetable substances, as well as salt and other dry foods ordinarily used as minor ingredients in such blends.

3. Other Minor Foods

10. One comment stated that color additives are important ingredients in the manufacture of processed foods, as well as drugs and cosmetics, and are used in minute amounts in the diet. This comment further stated that turmeric and paprika are color additives that are also included in the list of spices and vegetable seasonings that can be irradiated and suggested that the final regulation be expanded to include other listed color additives.

The agency does not agree that this regulation should include color additives. In preparing its proposed rule, the agency had not considered the ramifications of approving the irradiation of color additives. Such consideration would include whether specifications established for a color additive based on current manufacturing processes would still be adequate for the color additive after irradiation and what doses would be needed to accomplish the intended effects. Persons able to document the safe use of a source or radiation to irradiate color additives may submit a petition to the agency. The agency agrees that turmeric and paprika are both spices and color additives. However, their major use is as seasoning agents, and the agency sees no reason to preclude irradiation of these aromatic vegetable substances when they are also used as color additives (Ref. 10).

11. One comment stated that the rule should allow for the irradiation of dry enzyme preparations for microbial disinfection at a dosage up to 30 kGy (3.0 Mrad) because they are minor food ingredients.

The agency had not considered this specific use of irradiation in developing the proposed rule. However, the agency received a petition to treat dry enzyme preparations at doses up to 10 kGy (1 Mrad), and in the Federal Register of June 10, 1985 (50 FR 24190), the agency amended § 179.22 to permit this use. In this document, the agency is deleting § 179.22 and is incorporating that authorization for irradiation of dry enzyme preparations in new § 179.26(b). Persons able to document the safe use of a source of radiation at dosage levels higher than 10 kGy (1 Mrad) as authorized in new § 179.26(b) to control microbial contamination in dry enzyme preparations may submit a petition to the agency.

4. Destruction of Nutrients

12. Several comments stated that destruction of nutrients should be a concern in this rulemaking. The comments stated that many vitamins are light or heat sensitive, and that irradiation will destroy them. One comment stated that nutritional problems may develop for consumers because of nutrient loss when an entire class of foods is irradiated.

The proposal discussed this issue and explained that the available literature indicated that there are no nutritional differences between unirradiated food and food irradiated at levels below 1 kGy (100 krad). The minor ingredients allowed to be irradiated at higher doses are not sources of nutrients. Therefore, the agency believes it is appropriate to conclude that destruction of nutrients is not an issue in this rulemaking. There have been no additional data submitted to change this conclusion.

5. Selective Destruction of Microorganisms

13. One comment indicated that irradiation could contribute to increased aflatoxin contamination of foods. The comment cited a series of studies published in 1976 and 1979 by researchers from the National Institute of Nutrition of the Indian Council of Medical Research which reported that wheat irradiated at dose levels up to 250 kilorads showed a dose-dependent susceptibility to aflatoxin production (Refs. 11 and 12).

The agency disagrees that irradiation would contribute to increased aflatoxin contamination of foods. The studies referenced do not replicate actual food-handling practices. In the studies, the wheat was irradiated, autoclaved, and then innoculated with an aflatoxin-producing organism. The agency has no evidence that would lead it to conclude that food irradiated and stored under normal handling practices would show increased aflatoxin production. FDA does not believe that the results cited justify a modification of this rule.

14. Several comments stated that irradiation intended to eliminate one food hazard may affect the microbial spoilage patterns of food, thereby creating a new hazard. These comments expressed concern that *C. botulinum* spores would survive irradiation and would produce botulinum toxin without typical signs of food spoilage.

The agency agrees that this is a legitimate concern in some situations, but it does not apply to irradiation of dry foods or foods irradiated below 1 kGy (100 krad). Irradiation of food below 1 kGy (100 krad) will destroy few spoilage bacteria and thus will not change normal spoilage patterns. Furthermore, irradiation of minor ingredients at high doses, as allowed in this rule, would pose no problems because these minor ingredients are dry and dry foods do not provide a growth medium for *C. botulinum* spores.

15. Some comments stated that food irradiation may create or produce potentially harmful radiation-resistant bacteria, new bacteria, or viral mutants. One comment raised the possibility that mutated deoxyribonucleic acid (DNA)

fragments might be incorporated by bacteria, viruses, or cells of the human digestive tracts to create other harmful mutants.

Mutants produced during the irradiation of food are essentially the same as those that occur naturally. The only real difference is in the rate at which mutations occur. Radiation may increase the frequency of mutations and thereby increase the rate of evolution in bacteria or viruses that would occur otherwise through natural evolutionary processes. However, there is no reason to expect that the resulting mutants would be different or more virulent than those created in nature (Ref. 13).

Because bacteria are highly evolved organisms, well adapted to their environment, the vast majority of mutations would tend to be detrimental for the organisms. Mutant organisms that are more radiation resistant than their parents may survive and be present in an environment exposed to frequent sublethal doses of radiation. Such radiation-resistant bacteria, however, would be a problem only if irradiation were essential to produce a safe food. This is not the case and not permitting the use of food irradiation would not prevent such a problem from occurring.

Furthermore, the agency does not believe that such radiation-resistant bacteria or viruses, if they were produced, would be more resistant to other antibacterial agents. Although it is possible that specific conditions and indiscriminate irradiation might produce mutants, the agency concludes that the possibility that such mutants would be more virulent or more harmful is remote (Ref. 13).

There are only a few reports of genetic exchange between bacteria in the mammalian gut (Ref. 14). A few theories state that host cells may incorporate prokaryotic DNA, but it is not clear whether such genetic information is expressed. The agency sees no reason to prevent irradiation of food because of such speculations.

6. Toxicological Studies

16. Many comments claimed that it is FDA's first responsibility to ensure the absolute safety of all food produced and consumed in this country, not simply to make the process of production easier and/or cheaper for producers.

FDA agrees that its responsibility is to ensure that a food additive be demonstrated to be safe under the proposed conditions of use (21 U.S.C. 348(b)), but the agency does not believe that it was the intent of Congress, when formulating the act, that FDA ensure the consumer of absolute safety of all foods. Congress recognized that it would not be possible to determine with absolute certainty that no harm shall result from the intended use of a food additive. The Senate report stated: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." S. Rept. 2422, 85th Cong., 2d Sess. 6 (1958). As stated earlier, this is the standard of safety applied by FDA in its rulemaking for food additives.

On the other hand, the legislative history makes clear that Congress did not intend FDA to make regulatory decisions on the use of an additive based on an arbitrary opinion as to whether the additive should be used. Thus, the agency, in approving the use of a food additive, considers whether the food additive is safe and effective and not whether such approval will be beneficial to the producer of the additive.

17. One comment asserted that FDA's proposed regulation was illegal because it was not based on animal testing. While recognizing that neither the Food Additives Amendment of 1958 nor its legislative history specifies the exact types of tests that must be conducted to establish safe conditions of use of an additive, the comment claimed that a recurrent theme in much of the legislative history is the need for testing in animals to establish the safety of a particular additive.

The agency agrees that much of the testimony before enactment of the Food Additives Amendment of 1958 discussed animal testing of additives. This could be expected because most of the testimony about testing concerned direct food ingredients of unknown toxicity. Congress did not discuss how irradiation of food should be tested for safety. Furthermore, there is no indication in the legislative history that Congress expected every additive, whether an ingredient, a source of irradiation, or an incidental additive, to be tested the same way; nor does the act require such testing. Such a requirement would result in an unnecessary expenditure of resources. Consistent with this view, FDA has never required the same testing regimen for all types of additives.

FDA believes that the testing requirement envisioned by Congress was that there be sufficient testing to support the conclusion that there is a reasonable certainty of no harm from the expected use of the additive. The agency believes that any test that would not contribute to this conclusion should not be required. The agency has not required animal testing in the past under those situations where, by chemical or other testing and sound reasoning, it could conclude that the use of an additive was safe without animal testing. Therefore, FDA concludes that available animal test data are not necessary for determining the safety of those uses of radiation encompassed by this document. Animal testing is too insensitive to show an effect from irradiation of food at the doses allowed and, thus, would not contribute additional information to the evaluation of the safety of such uses.

Nevertheless, the agency reviewed all available animal studies to determine their adequacy and to evaluate the toxicological evidence. FDA's evaluation of these studies comfirms the agency's earlier conclusions that such data would not contribute further assurances of safety of foods irradiated in compliance with this rule.

18. One comment stated that food irradiation should be presumed dangerous until adequate scientific information is available for responsible decisionmaking and that FDA should make no decision until more information on hazards versus benefits of food irradiation is available.

For reasons discussed earlier in this section, the agency has determined that adequate information on radiation chemistry of foods is available to conclude that foods irradiated in compliance with this regulation are safe, and that the intended effects are achieved, thus complying with section 409 of the act.

19. One comment was concerned about the reliability of studies where animals were fed an abnormal diet and stated that results from these studies, positive or negative, may be misleading.

The agency agrees that standard toxicology tests where large percentages of the diet are composed of a single food, either irradiated or otherwise, may give results that could be misleading. The major difficulty in toxicological testing of irradiated foods has been to design tests that would provide useful and meaningful information regarding safety. It would be difficult to design a test that would exaggerate greatly the level of radiolytic products that will be ingested from irradiated food because, to accomplish this, the amount of irradiated food—the test substance that will be ingested—may also need to be increased. This increase in dietary intake may not be tolerated and may thereby become an added stress to the animal. A substantial change in diet may also create nutritional imbalances

among either macro- or micronutrients of the diet.

FDA believes, however, that useful information has been learned from those feeding studies where there has been some exaggeration of dose relative to that prescribed by this regulation. This information together with knowledge of the chemical changes that occur at low doses of irradiation is sufficient to establish the safety of food irradiated in accordance with this regulation.

20. One comment suggested that FDA should require animal feeding studies in which the animals are feed food irradiated at exaggerated doses to obtain an adequate safety factor.

FDA acknowledges that food additives have typically been tested in animals at levels that greatly exaggerate the proposed levels of use of the additive to establish an adequate margin of safety. This traditional method of establishing a margin of safety is inappropriate when the additive is a source of radiation. FDA has examined many early studies in which food fed to animals was irradiated at exaggerated doses to determine the effect of ingesting increasing amounts of radiolytic products. The agency noted that treatment of food with increasing doses of radiation can destroy essential components (e.g., nutrients) of the food or make the food unpalatable. These factors can confound experimental results.

Because these effects on food do not occur at the lower doses, exposure of the foods to exaggerated radiation doses would not in these instances represent a valid test for determining the safety of foods irradiated at the levels of use prescribed by this regulation. The agency has, therefore, concluded that exposing food to ever increasing doses of radiation as a means of increasing the amount of radiolytic products ingested is generally not appropriate.

21. A number of comments objected to approval of irradiation of any fruit or vegetable because of reports that irradiated sucrose solution caused toxic effects. The comments suggested that sucrose solutions would serve as good models for evaluating the safety of irradiated fruits and vegetables and that the reported toxic effects were reason to disapprove this use of irradiation.

The agency agrees that irradiated solutions of sugars have been shown to cause biological effects in vitro. Certain studies have shown: (1) Abnormal anaphase formation in bean root tips treated with sucrose solutions irradiated at 2 Mrads (Ref. 15), (2) decreased growth in carrot tissue cultures grown in sucrose solution irradiated at doses ranging from 0.05 to 2 Mrad (Ref. 16), and (3) increased revertants in *S. typhimurium* after incubation with irradiated solutions of sucrose and irradiated solutions of glucose and ribose (Refs. 7 and 17). (The agency points out that its use of the term "sugar" in this response is generic. Where appropriate, specific sugars are mentioned by name.)

The biologically active compounds formed during irradiation of sugar solutions in the presence of oxygen are predominantly dicarbonyl sugars produced by reaction of peroxy radicals with suger molecules. These dicarbonyl sugars can then be converted to *alpha, beta*-unsaturated carbonyl sugars which are also present in nonirradiated foods. The yield of biologically active carbonyl sugars will be less in irradiated complex food matrices than in irradiated simple sugar solutions because of reactions with substances such as metal ions and oxygen present in foods (Ref. 9).

The authors of the study using bean root tips (Ref. 15) postulated that the increased amount of abnormal anaphase was due to a drop in the pH of the irradiated sucrose solution. In a subsequent experiment reported in the same paper, the authors concluded that the low pH caused by irradiation of the sucrose solution alone was the cause of the mutagenic effects.

In feeding studies where sugars are present in a typically complex food matrix there is no increase in mutagenicity after irradiation. For example, direct irradiation of mango pulp to 20 kGy (2 Mrad) produced no mutagenic effect (Ref. 7). This study demonstrated that when a food containing sugars is irradiated, the food does not produce the same toxic effects that occur when these sugars are irradiated in simple solution. There is ample evidence (Refs. 7, 18, and 19) that the types and quantities of radiolytic products from irradiation of sugar solutions are not only dose dependent but are also dependent on specific conditions such as oxygen concentration and metal ions present in foods but not present in simple sugar solutions. Other studies on irradiated foods such as strawberries, dates, and mangoes likewise show no evidence of toxic effects (Refs. 20 through 26). The other studies that the agency reviewed regarding the toxicity of irradiated sucrose were of such poor quality that the agency does not believe that the data can be evaluated in a meaningful way.

The agency therefore concludes that irradiated aqueous sugar solutions are unsuitable models for predicting and extrapolating toxicity of irradiated foods. Therefore, the effects observed in these types of studies are not considered by the agency to be a reason for concluding that the uses of irradiation set forth in this regulation are not safe. The agency also concludes that there is no evidence that radiolytic products from sugars present in irradiated foods ause toxic effects to animals or humans.

22. One comment stated that a report in *Nature* magazine (Ref. 16) indicates that eating sugars irradiated at doses ranging from 0.05 to 2 Mrad can produce the same genetic changes in humans as exposure to irradiation itself.

The agency has reviewed this study and disagrees with the comment's interpretation of what the study found. Indeed the authors clearly did not reach the conclusions attributed to them by the comment. Furthermore, if humans or animals were irradiated at doses even 1,000 times lower than the levels used in this study, not only sterility but lethality would result within hours. On the other hand, humans and animals have consumed food irradiated at up to 4 Mrads (Refs. 27 through 32) without any indication of adverse effects of any kind. The study the comment referred to involved the effects of radiation on carrot tissue in liquid culture irradiated at 20 kGy (2 Mrads). This study and others concerning the effects of irradiation on solutions of sugars were discussed in the response to the previous comment.

The agency recognizes that irradiated sugar solutions have produced toxicity in vitro. The agency concludes, however, that irradiated sucrose solutions are unsuitable models for predicting and extrapolating toxicity of irradiated foods. Additionally, no evidence indicates that irradiated foods, including those containing sugars, will cause adverse toxic effects to animals or humans.

23. A few comments stated that a study involving hundreds of thousands of humans over 20 or 30 years is necessary before FDA can say irradiated foods are safe.

The agency has never required such long-term testing in humans to approve the use of a food additive and disagrees that such a study is necessary or appropriate. The agency recognizes that it cannot say with absolute certainty that any food, irradiated or not, is absolutely safe for all people under all conditions. The agency believes that the differences between foods irradiated as prescribed by this regulation and nonirradiated foods are so small, particularly compared to normal variations in the diet, that no effect is expected to be observed. The agency

believes that the substantial amount of available toxicological information supports the conclusion that the irradiation of food, as set forth below, is safe. Therefore, there is no basis for delaying for decades a decision to regulate food irradiation to conduct the type of study suggested by these comments.

24. Some comments also stated that many of the long-term toxicity studies on food irradiation were performed by Industrial Bio-Test Laboratories (IBT) and should, therefore, be considered invalid because much of the data generated by IBT had been falsified.

FDA agrees that studies containing falsified data performed by IBT should be rejected. All studies identified in the agency's review of available toxicological literature on food irradiation that had been performed by IBT were rejected. Much of the data compiled by IBT had been falsified or were proven invalid due to flaws in data collection, data reporting, and/or in experimental design. Thus the agency considers such data unacceptable to support safety.

25. Several comments stated that there are only a limited number of adequate chronic feeding studies on irradiated foods and that testing of the long-term health effects of consuming irradiated foods has been inadequate.

The agency has determined that because only minor chemical changes may result in food treated with low doses of radiation, animal feeding studies are not necessary to establish the safety of foods irradiated under conditions prescribed by this regulation. Therefore, it believes that the number of adequate chronic feeding studies on irradiated foods is irrelevant to its safety conclusion. The agency has evaluated those chronic studies that have been properly conducted and are considered to be adequate by current standards. None of those studies show adverse effects from the ingestion of irradiated food.

7. Alleged Adverse Effects

The agency reviewed 441 toxicity studies on irradiated foods (Refs. 2, 3, and 4). Forty-five of these studies dealt with subacute toxicity, 58 with subchronic toxicity, 126 with reproductive toxicity, 14 with teratology, 110 with chronic toxicity, and 102 with genetic toxicity or irradiated foods. Only 5 of the 441 studies reviewed (3 chronic feeding studies (Refs. 20, 33, and 34), 1 reproduction study (Ref. 35), and 1 combined chronic, reproduction, and teratology study (Refs. 36, 37, and 38) were considered by agency reviewers to be properly conducted, fully adequate by 1980 toxicological standards, and able to stand alone in the support of safety. The reports of these five studies indicate no adverse effects from the irradiated foods fed to test animals.

Although most of the studies were generally inadequate by present day standards and could not stand alone to support safety, many contained individual components which, when examined either in isolation or collectively, allowed the conclusion that consumption of foods treated with low levels of irradiation did not appear to cause adverse toxicological effects. Further, many of the studies were deemed useful for resolving certain questions. For example, if a potent toxic material were present at any level of toxicological significance in irradiated foods ingested by test animals, some consistent toxicological signs would be manifest in the studies reviewed. However, agency scientists have seen no such effects that present consistent patterns or trends of adverse effects that might be attributable to exposure to food irradiated at low dose levels. The agency, therefore, concludes that irradiation of foods as prescribed by this regulation is safe.

26. One comment referenced a book, "Consumer Beware" by B. Hunter, which stated that rats fed irradiated bacon and irradiated bacon and fruit mixtures showed increased mortality and an increased incidence of tumors. The author stated that the tumor incidence was increased and longevity was decreased.

Summaries of these studies were submitted in an early petition for sterilization of bacon by irradiation. FDA originally issued a regulation based on this petition (28 FR 1465; February 15, 1963). However, following evaluation of the complete reports of this study, FDA concluded that the sponsor had not met its burden for demonstrating safety (33 FR 12055; August 24, 1968) and rescinded the bacon regulations (33 FR 15416; October 17, 1968). Although previous reviewers asserted that the irradiated bacon studies may have shown adverse effects, the agency, after extensive reexamination of the study, now concludes that the claimed adverse effects cannot be substantiated because: (1) The study was of poor quality, (2) the numbers of animals examined were too small (three rats per group per generation) to have any statistical significance concerning tumors or longevity, and (3) the "total" incidence was only slightly increased in the low-dose group with no apparent dose dependence. Most national and international scientific bodies do not consider an increase in total tumors appropriate criteria indicative of a carcinogenic response (Ref. 40). The important consideration for determining if there is a carcinogenic response is whether there is an increase in the number of tumors at a specific organ site. The Armed Forces Institute of Pathology report (Ref. 39) on this study maintained that the tumors "showed no predeliction for any single organ." The numbers of animals at risk were too few to conclude that there was an effect on tumor incidence or longevity. If such effects had been caused by irradiated bacon, they should have been reproduced in the other irradiated feeding studies, including those the agency considers properly conducted (Refs. 20 and 33 through 38). However, such adverse effects were not observed.

27. One comment referenced a statement in the book "Eating May be Hazardous to Your Health," by J. Verrett and J. Carper that "[i]rradiation at high levels has been shown not only to severely destroy vitamins and minerals in food, but also to cause reproductive problems, a shortening of the life span and other complications in laboratory animals. In some instances—for example, in irradiated jams and fruit compote—cancer is a suspected result." The comment also stated that Dr. Verrett was a biochemist and researcher with FDA for 15 years.

The agency agrees that irradiation at high dose levels has been shown to destroy vitamins and other nutrients in food. As discussed in paragraph 11 of this preamble, however, destruction of nutrients is not a public health problem under the conditions of use approved for sources of radiation by this regulation.

It is not entirely clear which studies the authors were referring to in the statement from their book. The agency acknowledges that Dr. Verrett was an FDA employee during which time she reviewed many of the early petitions on food irradiation. The agency has reevaluated her reviews of the studies contained in these petitions. Judging from the irradiated foods mentioned in the statement quoted from her book and in the memoranda in the petitions, it appears that she is referring to two studies in which rats were fed a diet of (1) irradiated bacon and fruit compote (mixtures) (Ref. 39) and (2) irradiated pork, peaches, jam, carrots, and flour (Ref. 41).

The longevity and tumor (cancer) questions referred to in study 1 are addressed in paragraph 26 of this preamble. The agency has stated that an increase in "total" tumors is not indicative of a carcinogenic response by modern criteria for judging

carcinogenicity and the numbers of animals at risk were too low to conclude that there was either a tumor or longevity concern.

During its evaluation of toxicology data in 1982, the Task Group listed reasons for difficulty in evaluating the reproduction data from this study. The reasons include: (1) Inconsistent reporting of the numbers of animals used in each replicate experiment in several summary tables, (2) stillborn animal data not reported for every generation, (3) number of pregnant females not reported for all generations, (4) number of litters cannibalized only reported for the parental generation, (5) no indication given as to how or from which litters subsequent generations were chosen, and (6) replicate experiments not consistently identified in the summary tables.

In the second study (Ref. 41), the authors stated that there was a higher growth rate in the 2d and 3d generation animals and inferior breeding performance. Dr. Verrett was also concerned with reproductive and longevity questions in this study. FDA's reevaluation of this study cannot support Dr. Verrett's claims because the study was of very poor quality. The study pathologist specifically detailed many of the study's shortcomings and stated in the final report that "any conclusions resulting from this work should be drawn from the overall picture rather than the detailed studies of isolated aspects or organs" (Ref. 41).

The agency agrees with the pathologist's statement and has attempted to evaluate the overall picture referred to by the pathologist. As stated earlier, 5 animal feeding studies (Refs. 20 and 33 through 38) concerning longevity and/or reproduction (out of 441 toxicological studies reviewed) were considered by agency reviewers to be well designed, properly conducted, and reported. The reports of these five studies indicate no adverse effects to test animals fed irradiated foods.

The agency review included reports of 44 chronic studies, 60 reproduction studies, and 66 combined chronic reproduction studies. Although most of these studies have been considered less than adequate for a variety of reasons, the agency has been able to conclude from them collectively that no treatment-related adverse effects on the longevity of test animals or their reproduction were evidenced by these studies.

28. One comment referenced the report of a study (Ref. 42) in which statistically significant changes in the weights of ovaries and testes were observed when irradiated onions were fed to mice.

FDA has evaluated the report of this multigeneration reproduction study and notes that it was only an abstract from the World Health Organization (WHO) and has never been published as a complete report. The effects reported were a decrease in ovarian weight, significant when compared to both the normal control (no onion diet) and the onion control (unirradiated onion diet), and a decrease in testes weight significant as compared with the normal controls only. Histological examination did not reveal any particular changes in the ovary and testes of the group fed irradiated onions. No effects were observed on reproduction, fertility, or other parameters observed. In 1977, a WHO committee reviewed a draft of the manuscript and reported that because there were no observed abnormal histopathology changes or deleterious effects on reproduction, these organ weight changes, if real effects, were not regarded as being treatment related. Other reproduction, subchronic, or chronic studies on irradiated onions (Refs. 37 and 43 through 47) at comparable or higher doses of irradiated food administered to other animals did not report any changes in ovarian or testicular weights. These findings lead the agency to agree with the conclusions of the WHO committee.

29. One comment, citing a review paper (Ref. 48), stated that "when dogs have been fed irradiated egg solids, reproductive failure has occurred, and chicks and rats have died as the result of hemorrhage due to lack of vitamin K."

This statement has been taken out of context. The authors were actually referring to the nutritional imbalances seen in some of these irradiated food studies. The entire quote reads:

> Despite the fact that the experimental animals are provided with diets of known nutritional requirements for adequate growth and development, the high level of test food which is incorporated in the diets may present a completely unrealistic situation which can place a nutritional stress on the animals and result in nutritional imbalances. An example of this situation has been observed in feeding of high levels of irradiated egg solids to dogs where the interrelationship between biotin and avidin was found to exert a role in causing reproductive failure. A related example of difficulty which has been experienced in separating potential toxicity and nutritional adequacy of irradiated foods was the previously mentioned effect of radiation sterilization on vitamin K (antihemorrhagic factor) in certain foods, which resulted in hemorrhage and death in chicks and rats. Careful and detailed studies are necessary to elucidate the mechanisms involved in physiological abnormalities of this nature.

FDA agrees with the authors that nutritional imbalances resulting from feeding large amounts of a single food to animals confound the results of these studies.

30. One comment stated that polyploidy (chromosomal changes) has been shown as a toxic consequence in animals and humans fed irradiated wheat.

The agency does not believe that this is a correct statement. The agency is aware that in several experiments conducted by the National Institute of Nutrition (NIN), Indian Council of Medical Research, Hyderabad, India, the investigators claimed that polyploidy (chromosomal changes) was a toxic consequence in animals and humans fed irradiated wheat. A committee of Indian scientists critically examined the techniques, the appropriateness of experimental design, the data collected, and the interpretations of NIN scientists who claimed that ingestion of irradiated wheat caused polyploidy in rats, mice, and malnourished children. After careful deliberations, this committee concluded that the bulk of these data are not only mutually contradictory, but are also at variance with well-established facts of biology (Ref. 49). The committee was satisfied that once these data were corrected for biases which had given rise to these contradictions, no evidence of increased polyploidy could be associated with ingestion of irradiated wheat.

The agency agrees with the conclusions of the committee of Indian scientists that the studies with irradiated foods do not demonstrate that adverse effects would be caused by ingestion of irradiated foods.

31. One comment disagreed with FDA's conclusion that foods irradiated at doses below 1 kGy (100 krad) are safe and stated that there is little reassurance in the fact that unidentified radiolytic products are present in irradiated foods at low concentrations, particularly if single exotic molecules may be capable of causing carcinogenic chromosomal aberrations.

The agency recognizes that radiolytic products will be formed in irradiated food. Ionizing radiation results in the formation of unstable free radicals and other reactive chemical intermediates which normally undergo rapid reaction to form more stable molecules. Of the total radiolytic products formed, a small fraction may be assumed to be unique or "exotic." Radiolytic products and URP's have been defined both earlier in this section and in the BFIFC report (Ref. 1). Certainly some URP's will be formed

which are structurally atypical of parent food molecules. Such URP's may be free radical coupling products of lipid and protein-derived radicals, dimers, and cross-linked products. However, enzymatic hydrolysis of some of these compounds by normal digestive enzymes is expected to yield normal molecular subunits such as fatty acids, amino acids, monosaccharides, and normal metabolic products of these subunits which would be the same result as from the normal digestion of the original parent molecules.

If exotic molecules of the extreme toxicity implied by the comment were present at any level of toxicological significance in irradiated foods ingested by test animals, some consistent toxicological trends and patterns would be manifest in the studies reviewed. Because it has seen no consistent trends or patterns, the agency concludes that foods irradiated as prescribed by this regulation are safe.

32. One comment referenced a study submitted to FDA by USDA on fruit flies (drosophila) fed irradiated chicken. This study showed a dose-related decrease in offspring (Ref. 50), and the comment stated that this effect is consistent with chromosmal damage.

FDA notes that in the sex-linked recessive lethal study in Drosophila there was no evidence of mutagenicity. Additional data on fertility and fecundity were also included in the study, and a dose-related decrease in offspring was noted. Although there were fewer offspring in the groups raised on irradiated diets than in concurrent controls, the agency concluded that this effect could arise from a host of causes unrelated to reproductive toxicity, and is an unreliable indicator of an adverse reproductive effect. Mammalian data on reproduction are more relevant to humans, and these studies, as stated earlier, demonstrate no consistent patterns or trends indicative of a positive reproductive effect.

33. One comment referenced a study submitted to FDA by USDA and stated that mice fed radiation-sterilized chicken meat showed a significant increase in testicular tumors, increased death rate, increased kidney damage (glomerulonephropathy), and decreased survival. In addition, the comment implied that male dogs fed radiation-sterilized chicken had significantly lower body weights throughout adulthood than dogs fed a frozen control diet, and claimed that this shows toxicity of the irradiated chicken diet.

The agency disagrees with the comment that these studies demonstrate a treatment-related increase in testicular tumors. The studies involving mice and dogs fed radiation-sterilized chicken were carried out at Raltech Scientific Services (Raltech). These studies were initiated under the sponsorship of the U.S. Army and completed under the sponsorship of USDA.

The report prepared by Raltech scientists suggested the possibility that chicken irradiated at approximately 6 megarads produced testicular tumors in CD–1 mice in lifetime feeding studies (Ref. 51). Agency scientists have independently examined the histopathology slides to determine whether testicular tumors were induced by ingestion of irradiated chicken. They concluded that the total histopathological evidence did not support a treatment-related induction of testicular tumors (Ref. 5).

These data were also referred to the National Toxicology Program's Board of Scientific Counselors for peer review. The Board concluded also that the data do not allow the study to be categorized as one demonstrating a carcinogenic response in mice fed chicken meat treated with gamma or electron beam radiation (Ref. 6).

All mice fed chicken meat diets (both nonirradiated frozen chicken meat control diets and irradiated chicken meat diets) showed signs of extensive mineralization and glomerulonephropathy and decreased survival compared to mice fed chow control diets. After careful examination of the studies and comparison of data between the mice fed chicken meat control diets and the mice fed chow control diets, the agency concludes that the effects were due to the high protein content of the chicken diets rather than to the fact that some diets were irradiated.

The agency noted decreased survival in the female mice of the group fed gamma-irradiated chicken. However, because the decreased survival occurred only in one sex group, and the result was only marginally significant ($p=0.04$), the agency does not consider this effect to be treatment related.

With regard to the dog feeding study, the agency does not consider the body weight decrease to be of toxicological significance because of the nature of the protocol that was followed. The maximum quantity of diet provided for each dog was originally limited to 500 grams per day (approximately 300 grams dry matter per day). However, some dogs fed chicken meat diets (irradiated, frozen, or thermally processed) consistently consumed the entire daily ration and consequently had higher body weights than dogs fed chow control diets. This difference in body weights between the different diet groups is attributable to excessive caloric intake of the dogs fed chicken meat. Assuming that the dogs should maintain an "ideal" weight, the contract laboratory restricted the food intake for "selected" overweight dogs as required to initiate weight loss until acceptable body weights were obtained. The few dogs considered underweight were allowed to feed until their body weight increased to an acceptable level. Because the diet was manipulated in this way, the agency does not consider the changes in body weight to be treatment related.

34. Several comments referenced two Russian reports (Refs. 52 and 53) that found damage to kidneys and testes in rats fed irradiated feed. The authors reported dose-dependent histopathological changes in the kidney and testes of rats fed irradiated lab chow. The changes were claimed to be similar to those changes seen in human autoimmune disease involving these tissues.

FDA has found that information on critical details of the experimental design of the studies is either incomplete or missing. The reproductions of photomicrographs are unusable, and the numerical data are incomplete across dosage groups. There is no information on the survival rates of rats to the end of the experiment. The total number of rats actually examined for histopathologic observation is not stated nor is the scope of such observations. There is a general lack of incidence values and survival information that are critical for interpreting the findings in the kidneys and testes.

The agency notes that the authors had not published any previous studies in which rats were used as experimental models and, therefore, these authors may not have been familiar with common progressive nephrosis of the rat kidney. The qualitative description of the kidney changes reported is generally consistent with kidney disease commonly seen in aged laboratory rats. Many of the features of chronic progressive nephrosis (Ref. 54) common to aged rats are identical with the microscopic changes described in kidneys by the Russian authors. Without information on the comparative incidence and severity of the kidney lesions in all groups, the agency cannot verify that these reported effects are treatment-related, especially considering the inevitability of these types of kidney changes in rats as a result of old age.

FDA reviewed the kidney data in 11 chronic studies (Refs. 28, 33, 34, 55 through 62) in which rats were fed

various diets consisting of food or feed irradiated at various doses under a variety of conditions to see if it would be possible to confirm the findings of the Russian authors. An examination of these results revealed no findings or evidence of treatment-related kidney changes as were reported by the Russian authors. One of the 11 studies reviewed, which most closely resembled the Russian study (Ref. 28), had also investigated rats fed a diet consisting wholly of chow irradiated at both a lower (2 kGy, 0.2 Mrad) and higher (25 kGy, 2.5 Mrad) dose. The agency reviewed this study and found no evidence of treatment-related kidney changes as reported in the Russian study.

Further, the treatment-related kidney effects claimed by the Russian authors have not been reported in any other mammalian studies as an effect caused by ingestion of irradiated food. Also, data available on irradiation of animal feeds where the whole animal diet is irradiated have not shown comparable pathology (Ref. 27).

Based on the descriptions of the findings of testicular effects, FDA believes that such findings are probably not induced by radiolytic products in the irradiated diet. Extreme size and weight differences between right and left testes can arise from trauma (e.g., fighting) or may be present from birth. It is not clear whether some of the microscopic changes that are discussed affected both testes or were a feature of the smaller testes. FDA also reviewed 11 studies to verify the testicular lesions reported by Russian authors, and none of the studies reviewed revealed treatment-related testicular changes similar to those reported in the Russian reports. One of the 11 studies reviewed, which most closely resembled the Russian study (Ref. 28), found no evidence of treatment-associated testicular changes similar to those reported in the Russian study.

The agency concludes that, given the paucity of data from these two reports and the considerable, more substantial, evidence from other studies, the resuts of these Russian reports do not raise valid questions concerning the safety of food irradiated under the conditions of this regulation.

35. One comment claimed that three reports showed dominant lethal effects of irradiated foods (Refs. 63, 64, and 65).

The agency has reviewed these studies, and two of these three studies have been addressed (Refs. 64 and 65) in the response to paragraph 30 of this preamble. the third study (Ref. 63) claimed to have demonstrated an increase in preimplantation deaths. In this study, mice were fed 50 percent of their standard chow diet irradiated at a dose of 50 kGy (5 Mrad). There was no increase in postimplantation losses. Postimplantation losses, determined by counting dead embryos, are believed to be the most reliable and sensitive indicator of dominant lethality. The authors found only preimplantation losses, which are much less sensitive than postimplantation losses and merely a measure of total implants dead or alive subtracted from the total number. In addition to the possibility that results of the study could be spurious, any number of factors other than dominant lethality may cause preimplantation losses, such as a decrease in the number of eggs ovulated.

If these effects were real, one would expect to see some effect on postimplantation losses at a lower dose because postimplantation losses are a much more sensitive indicator than preimplantation losses, as mentioned above.

Although the findings reported may be statistically significant, the authors were uncertain as to what to attribute these results. They concluded that the most probable mechanism by which these effects could be produced would be via chromosomal aberrations. The studies necessary to establish an association between these effects and chromosomal aberrations were not conducted. Additional treatment levels below that conducted as mentioned above to detect postimplantation losses or examination of the 24 to 48 hour fertilized eggs could have provided better evidence of causality; but these studies were not conducted. Thus, although preimplantation losses were observed, FDA concludes that there is no biological significance to this observation because it was not reproducible. In three comparable studies, two in mice and one in rats (Refs. 66, 67, and 68), where 100 percent of the chow diet was irradiated with 25 kGy (2.5 Mrad) giving comparable radiolytic products as those found in Ref. 63, no preimplantation losses were demonstrated.

B. Labeling Issues

Under current regulations (21 CFR 179.22 and 179.24), several specified foods are permitted to be irradiated provided that the label bears the following statements: (1) "Treated with ionizing (or gamma or electron) radiation" on retail packages, or (2) "Treated with ionizing (or gamma or electron) radiation—do not irradiate again" on wholesale packages and on invoices or bills of lading of bulk shipments. In the proposal, FDA stated that it was interested in receiving additional comments discussing: (1) Whether FDA should require any type of label statement on food that has been irradiated; (2) if so, whether the statement should be required only on labels of food that has been irradiated (first generation foods) or also on the label of finished foods which may contain irradiated ingredients (second generation foods); (3) whether any required label statement should remain the same as that provided under existing regulations (i.e., "treated with ionizing (or gamma or electron) radiation") or whether some other phrasing would be more appropriate (e.g., "processed with ionizing energy"); and (4) whether consumers would be more misled by the presence of some type of retail label statement or by the absence of such a statement.

The labeling provisions of this final rule differ from that in the proposed rule and from the current labeling regulations as follows: This regulation requires that the wholesale label bear either the statement "Treated with radiation, do not irradiate again," or the statement "Treated by irradiation, do not irradiate again," and that the retail label bear the following logo:

along with either the statement "treated with radiation," or the statement "treated by irradiation." Throughout the remaining discussion in the preamble about the labeling provisions, the agency has used the terms "treated with radiation—do not irradiate again," and "treated with radiation," to represent both alternatives that the manufacturer may use in its wholesale or retail labeling in order to simplify the discussion. In addition to the mandatory language, the manufacturer may also state on the wholesale or retail label the purpose of the treatment process or expand upon the kind of treatment used. That is, the manufacturer may include in the labeling any phrase, such as "treated with radiation to control spoilage," or "treated with radiation to extend shelf

life," or "treated with radiation to inhibit maturation" as long as the phrase truthfully describes the primary purpose of the treatment. Similarly, the manufacturer may choose to state more specifically the type of radiation used in the treatment, i.e., "treated with x-radiation," or "treated with ionizing radiation," or "treated with gamma radiation," if more specific description is indeed applicable.

The agency recognizes that, because this is a new technology, manufacturers may want to use additional labeling statements as part of a consumer education effort. For example, in addition to the required language, the firm may wish to state that "this treatment does not induce radioactivity." The agency will permit such educational statements if they are truthful and not misleading to consumers.

In lieu of labeling individual items of unpackaged irradiated foods, FDA is allowing the required logo and label to be displayed to the purchaser as a point-of-purchase counter sign or card or on the labeling of the bulk container.

Half the comments specifically addressed the retail labeling issue, and over 80 percent of those comments urged that retail labeling be "required to prevent consumer deception." The remaining comments opposed any retail labeling of irradiated foods. Most comments, however, were in favor of some sort of labeling for wholesale packages of foods still in processing to prevent reirradiation.

In addition, the large number of consumer comments requesting retail labeling attest to the significance placed on such information by consumers. Moreover, several comments argued that irradiation of food altered the organoleptic properties of food, thereby reducing its nutritional value. These changes in the food, the comments asserted, make the irradiation of the food a material fact that must be disclosed under section 403(a) and 201(n) of the act. Because of these comments, FDA had decided to require that the label and labeling of food products bear the appropriate statements to inform consumers that the food has been irradiated. The agency emphasizes, however, that the labeling requirement is not based on any concern about the safety of the uses of radiation that are allowed under this final rule. Further responses to these comments are contained in paragraphs 36 through 49.

36. One comment stated that FDA did not have the authority to require a retail label statement on foods that had been irradiated because such labeling was not a prerequisite for safe use under section 409(c)(1) and (d) of the act. This comment argued that where safety is not at issue, FDA's authority to require special labeling is much less expansive. This comment also stated that if the standard for misbranding under section 403(a)(1) of the act is whether an additive affects organoleptic properties of food (i.e., taste, color, smell, or texture of foods), the presence of many additives now commonly used in foods should be highlighted on current product labels because most additives affect these qualities to some degree. This comment also stated that conventional food-processing methods also affect the organoleptic properties of food.

The agency is of the opinion that there is adequate statutory authority under sections 403(a), 201(n), and 409 of the act to require a retail label statement on foods that have been irradiated even though there is no concern about the safety of such treatment at the doses provided by this final rule. Section 409(c)(3)(B) of the act prohibits the approval of a food additive if a fair evaluation of the data before the Secretary "shows that the proposed use of the additive would promote deception of the consumer in violation of this Act or would otherwise result in adulteration or in misbranding of food within the meaning of this Act." In this case, the standard for misbranding under sections 403(a) and 201(n) of the act is whether the changes brought about by the safe use of irradiation are material facts in light of the representations made, including the failure to reveal material facts, about such foods. Irradiation may not change the food visually so that in the absence of a statement that a food has been irradiated, the implied representation to consumers is that the food has not been processed.

Food ingredients, including food additives that have a functional effect in food, are required to be disclosed on food labels. Food additives such as aspartame that are present as ingredients in foods are required to be included on the ingredient labeling statement on the food's label. Therefore, the consumer is informed of the presence of these ingredients and the representation is not misleading.

The agency agrees that conventional food-processing methods also affect the organoleptic properties of food in material ways but in these cases the processing is either obvious to the consumer or conveyed to consumers through labeling or packaging. Canned foods have obviously been canned and frozen foods have obviously been frozen. Pasteurized milk is not obviously pasteurized but this fact is declared on the label.

Canning, freezing, and pasteurization are, of course, well-established processes with which the consumer is familiar. Whether information is material under section 201(n) of the act depends not on the abstract worth of the information but on whether consumers view such information as important and whether the omission of label information may mislead a consumer. The large number of consumer comments requesting retail labeling attest to the significance placed on such labeling by consumers.

FDA has historically required the disclosure of a food processing agent whenever it is material to the processing of foods. For example, flour is required to be modified by the term "bleached" if bleaching agents are used in processing and modified by the term "bromated" if potassium bromate is used in the processing of the flour. These requirements are part of the standard of identity for various flours (see 21 CFR 137.205).

There are many other examples where processing must be disclosed. Several standards of identity require label disclosure if the product has been enriched or fortified (see 21 CFR 137.305, enriched farina). Several standards of identity for juices require that the label indicate when the product is made from a previously concentrated ingredient (see 21 CFR 146.145, orange juice from concentrate). Orange juice must also be labeled pasteurized when pasteurization is part of the juice's processing (see 21 CFR 146.140, pasteurized orange juice).

Foods made in semblance of a traditional food must disclose the processing difference. Potato chips made from dehydrated potatoes, onion rings made from minced onions, and fish sticks made from minced fish are all required to disclose these material differences in processing.

The agency concludes that requiring a retail label statement that a food has been irradiated is consistent with the agency's statutory authority and current labeling practice.

37. Several comments argued that a retail label requirement was inappropriate because irradiation was used in place of chemical fumigants and FDA does not require that these chemicals be identified on the retail label. One comment stated that "there is no more rational basis for labeling irradiated foods (at the retail level) than for labeling pesticide residues present in agricultural commodities, indirect additives from packaging, flour and bread from fumigated wheat, or the

current fumigated spices themselves." Another comment pointed out that FDA has long held the position that nonfunctional secondary additives need not be declared on the label and that the policy codified at 21 CFR 101.100 should apply to foods that have been irradiated.

The issue here is whether the irradiation of food is a material fact that must be disclosed to the consumer to prevent deception. As stated earlier, irradiation may change the characteristics of a food in a manner that is not obvious in the supermarket. Packaging materials and incidental additives such as processing aids that have no technical or functional effect in the food and thus do not ordinarily affect the characteristics of the food may be exempted under 21 CFR 101.100 from the normal labeling requirements under the act. Furthermore, Congress specifically exempted pesticide chemicals under section 403(1) of the act from a retail labeling requirement when the food has been removed from its shipping container.

As stated earlier, FDA believes that the irradiation of food is a material fact that must be disclosed. The agency recognizes, however, that the irradiation of one ingredient in a multiple-ingredient food is a different situation, because such a food has obviously been processed. Consumers would not expect it to look, smell, or taste the same as fresh or unprocessed food, or have the same holding qualities. Therefore, FDA advises that the retail labeling requirement applies only to food that has been irradiated when that food has been sold as such (first generation food), not to food that contains an irradiated ingredient (second generation food) but that has not itself been irradiated.

38. One comment stated that a retail label requirement would imply that there is a hazard involved in radiation processing and that such a statement would mislead the public about the safety of the process and have a negative impact on the development of this technology.

Although FDA recognizes the potential for consumer confusion, because there is no safety problem with food irradiated in accordance with this final rule, any confusion created by the presence of a retail label requirement can be corrected by proper consumer education programs, and the presence of a retail label statement should not deter the development of this technology. Consumer comments reflect a growing awareness of the process of food irradiation. Many consumer letters acknowledge that food irradiation, as prescribed by the proposed regulation, will not cause the food to become radioactive. The agency has also received comments stating that experiences in other countries, such as the Netherlands, demonstrate that consumers do not necessarily reject irradiated foods when they are properly labeled.

A recent Good Housekeeping Institute Survey seems to support this view (Ref. 69). In addition, elsewhere in this document the agency has made it clear that manufacturers have the option of providing additional labeling to describe the specific purpose of the treatment provided that such additional labeling is truthful and not misleading.

The agency has also concluded, however, that the original labeling terminology required by existing 21 CFR 179.22 and 179.24 may be overly technical and that the type of radiation being used is not necessarily meaningful to consumers and that the retail label would be just as informative if the required retail statement were "treated with radiation." The regulation has been modified accordingly.

39. Other comments suggested that the retail label statement be revised to state: "treated with ionizing radiation to prolong shelf life to ——— (insert date)."

As explained above, any confusion created by the terms "radiation" or "irradiation" required to appear as part of retail labeling can be corrected by appropriate consumer education programs. Recognizing that labeling itself is a valuable source of consumer education, FDA encourages optional statements to be included on the retail label that expand upon the kind of treatment used or the purpose of the treatment. Such additional explanatory language may be used whenever the additional language is applicable and not misleading.

For example, "treated with radiation to control insect infestation," "treated with radiation to inhibit maturation," and "treated with radiation to inhibit spoiling" are all examples of acceptable alternatives describing the purpose of the treatment if in fact the additional statements reflect the purpose of the treatment. "Treated with electron beam radiation" is an example of an acceptable expansion on the kind of treatment, if in fact an electron source was used. These optional statements would not only have an educational benefit, but would also avoid any possible mistaken inference by the public that the required labeling is a warning statement.

A manufacturer who wishes to label its product as "treated with radiation to extend the shelf life to ——— (*insert date*)" would, of course, be required to possess data substantiating that the radiation treatment would, in fact, extend shelf life until that date.

In addition, a manufacturer who finds that the terms "treated with radiation" or "treated by irradiation" are misinterpreted by a significant number of consumers may petition FDA for approval of alternative language, e.g., "freshness preserved by irradiation." However, the manufacturer would be required to provide adequate evidence demonstrating that the alternative language is both more readily accepted by the public and not misleading as to the nature of treatment as a form of radiation.

40. Several comments took the position that food irradiation is a food-preservation process and should be considered a process instead of a food additive, at least for labeling purposes. Those supporting this view stated that other food processes are not required to be revealed on the label and that food irradiation should be similarly exempt from label declaration. The comments also stated that a retail label statement is not justified on the basis of risk.

The agency agrees that irradiation uses permitted by this final rule are safe. The retail label requirements of existing 21 CFR Part 179 were based on misbranding considerations and not on food safety or health risk considerations. As has been explained before, section 201(s) of the act specifically includes a source of radiation as a food additive (21 U.S.C. 321(s)).

Nor is there any statutory provision that exempts processes from being declared on a food label (49 FR 5718) and the agency must examine whether the failure to declare such processing is misleading to consumers. In this context it is not relevant whether irradiation is considered a process in determining whether retail labeling is appropriate.

41. Most comments written in support of a retail label requirement for irradiated foods stated that the irradiation process has not been demonstrated to be safe, and that if irradiation treatment of food is permitted, the food label should inform consumers about which foods have been irradiated so that consumers can make informed decisions about the kinds of foods they buy.

As discussed elsewhere in this document, the agency has concluded that the irradiation of foods at a maximum dose of 1.0 kGy (100 krad) is safe when used to control arthropod pest infestation or to inhibit the growth and maturation of fresh foods. In view of this fact, the arguments in favor of a

retail label requirement, based solely on the grounds that the irradiated food is not safe, must be discounted.

42. Several comments in favor of a retail label requirement argued that irradiation of food altered the organoleptic properties of food and reduced its nutritional value and that these changes are material facts requiring disclosure under sections 403(a) and 201(n) of the act. The comments stated that consumers have a right to know whether such processing has taken place.

A food is considered misbranded under section 403(a) of the act if its labeling is false or misleading in any particular. In determining whether labeling is misleading, the agency must take into account the extent to which the labeling fails to reveal material facts in light of representations made about the food or consequences that may result from the use of such food (section 201(n) of the act). Therefore, the agency must decide whether the changes in the organoleptic properties of irradiated foods constitute a material fact or whether the information that a food has been irradiated constitutes information that is material to a consumer even if the organoleptic changes were not significant.

The agency agrees that irradiation causes certain changes in foods and that even small changes that pose no safety hazard can affect the flavor or texture of a food in a way that may be unacceptable to some consumers. Even those opposed to a retail labeling requirement agree that under certain conditions irradiation causes substantial changes in the organoleptic properties of some foods. Moreover, as discussed in the response to comment 36, irradiation may not change the food in any way that is visible to the consumer, so a label statement provides the only means of letting consumers know that a food has been irradiated. Thus, the absence of a label statement on retail foods may incorrectly suggest that an irradiated food is essentially unprocessed. Therefore, this regulation provides that the retail label contain a statement that the food has been irradiated.

43. The agency has also reviewed comments that argue both for and against the substitution of the term "ionizing energy" for the term "ionizing radiation" in the proposed wholesale labeling requirement and in any retail labeling requirement that was contemplated but not proposed. Most of the arguments for the substitution stated that they favored use of the term "ionizing energy" to reduce the problem of confusing irradiation with radioactivity and argued that use of the term "ionizing energy" would be less likely to be misunderstood by consumers. Other comments argued that both terms are likely to be misunderstood by consumers.

In view of the fact that the term "energy" could be confused with its more ordinary meaning as applied to foods, namely, a capacity of the food to provide caloric energy, the agency does not agree that substitution of the term "ionizing energy" would be less likely to be misunderstood by consumers. Furthermore, none of the comments offered any substantive evidence that one term would more likely be understood than another, either at the wholesale or retail level.

The agency does recognize that some population groups may harbor a prejudice against anything treated with radiation but is of the opinion that with the labeling flexibilities provided in this regulation, manufacturers will be able to overcome these prejudices as consumers become more educated about the process and the advantages this technology has over alternatives existing in the industry.

44. One comment suggested that the agency use the term "picowave treatment" in order to parallel the term "microwave treatment" that is commonly used for another form of food processing.

The agency gave careful consideration to the use of this term but it finally concluded that it should reject this suggestion because the term "picowave treatment" is not in common use in the industry or in the scientific community and would be neither more informative to the consumers than the label statement "treated with radiation" nor more understood by those in the food-processing industry. In addition, the microwave terminology is associated with complete cooking of the food which in no way parallels irradiation treatment of food as permitted by this final rule.

45. Several comments suggested alternative language for the wholesale label statement based on the assumption that the agency would permit reirradiation of a food provided that the total absorbed dose did not exceed the permitted amount. These comments suggested statements such as "ionization processed with a maximum of ——— kGy" or "processed with electromagnetic energy (or picowaves) or electron beam energy (as appropriate) in the range of 0.5 MeV to 10 MeV with a dose of ——— (blank to be filled in by processor)."

Elsewhere in this document the agency has addressed the issue of reirradiation and has concluded that multiple exposure of foods to radiation is inappropriate. Therefore, there is no need to discuss these comments.

46. A few comments suggested that the wholesale label statement be replaced by a code stamp that would reflect the pertinent information about the treatment similar to that now used for the place and date of production for canned foods.

The agency has rejected this approach because the purpose of requiring a wholesale label is to alert other food processors that a food has been irradiated. The code stamp currently used in the production of canned foods is informative only to the individual canner. Different firms use different codes for their own special tracking of food lots. For a code stamp to be useful at all, there would have to be a universal code used by all manufacturers. Even this approach, however, is unsatisfactory when compared to labeling because there is a greater chance for error in interpreting a code stamp than in reading a statement that the food has been irradiated.

47. A few comments suggested that the agency permit alternative language to be substituted for any required statement to reflect more accurately the type of processing involved. In place of the phrasing "treated with ionizing radiation," the comments suggested statements such as "treated with x-rays" or "treated with gamma radiation from cobalt-60" or "treated with electron beam energy."

In the **Federal Register** of January 7, 1987 (32 FR 140), the agency proposed that terms such as "processed (or treated) by x-radiation" and "processed (or treated) by gamma radiation" could be substituted for "processed (or treated) by ionizing radiation" at the option of the processor, whenever the more specific treatment was applicable.

The agency concludes that the option to describe the type of radiation should still be made available to food processors. The agency is of the opinion that it is in the public interest for labels to bear a statement that is as descriptive of the process as possible. Permitting these alternative labeling statements will also serve to educate the general public about the various types of treatment used by food processors.

48. Several comments recommended that FDA require a logo to represent "radiation" instead of a worded statement on the label of retail foods that have been irradiated. These comments pointed to the fact that there is a symbol used internationally to convey the fact that food has been irradiated. A comment from the U.S. Environmental Protection Agency (EPA),

although not opposed to the use of a logo to represent use of the irradiation process on food product labeling, expressed concern that the symbol that has been used internationally closely resembles EPA's official logo. EPA asserted that use of the symbol might cause consumer confusion about whether EPA had endorsed use of a product that carried such a logo.

The agency believes that the use of a logo in conjunction with a descriptive label of the process would serve to educate the general public that the logo and the label are synonymous. Thus, the agency is requiring that the label and labeling of retail packages of foods irradiated shall bear the following logo

along with the statement "treated with radiation." This logo derives from the symbol that has been used internationally to convey the fact that the food has been irradiated.

For irradiated foods not in package form, the required logo and phrase "treated with radiation" shall be displayed to the purchaser by other means as discussed elsewhere in this document. In addition, the label and labeling and invoices or bills of labeling shall bear the statement "treated with irradiation—do not irradiate again" when shipped for further processing, labeling, or packaging.

With industry uniformly using this logo in conjunction with the wording "treated with radiation" or "treated by irradiation" and an educational effort to inform consumers about the meaning of the logo, the agency has modified this rule to require 2 years after its publication only the use of the logo without the accompanying terminology. The agency will assess the need for the mandatory language to accompany the logo during this 2-year period. Any extension of the wording requirement will be established through notice and comment rulemaking.

49. Several comments argued that even if a retail label requirement were a part of the regulation that this requirement should not apply to fresh fruits and vegetables because such labeling was impracticable. Other comments simply asked how any retail label requirement would apply to fresh fruits and vegetables sold in bulk retail food stores.

The agency does not agree that retail labeling of fresh fruits and vegetables would be impractical. The final regulation as modified states that packaged fruits and vegetables include the logo and the statement "treated with radiation" on the label. For irradiated fruits and vegetables not in package form, the regulation provides three alternatives for meeting the labeling requirements. As an alternative, each item of irradiated food may be individually labeled. The agency has been informed that some companies plan to label each piece of irradiated food. The required information may be displayed to the purchaser with either: (1) The labeling of the bulk container plainly in view or (2) a counter sign, card, or other appropriate device bearing the logo and the term "treated with radiation" in order to inform the consumer that this product has been treated with radiation. This approach is consistent with the exemption provided in 21 CFR 101.22(e) for bulk fruits and vegetables that may have applied waxes or coatings and for processed foods sold in bulk without packaging.

C. Current Good Manufacturing Practice

FDA has issued general regulations regarding current good manufacturing practices (CGMP) (21 CFR Part 110) as well as specific CGMP regulations for some types of food (21 CFR Parts 113, 114, 118, 123, and 129) or food additives (21 CFR 172.5, 174.5, 182.1, 184.1). Such regulations are based on standard practices of responsible manufacturers in the industry.

The CGMP regulation for irradiated food could not be based solely on current radiation practices because of the lack of substantial experience with food irradiation. However, there has been extensive experience with other types of radiation processing (e.g., hospital supplies), and the industry has established standards in some cases. FDA considered both the experience and standard practices in the nonfood radiation processing industry and CGMP in the food industry in developing its proposed regulation for irradiated food and in evaluating comments.

In general, comments were supportive of the proposed provisions in § 179.25, including the proposed requirement for a scheduled food irradiation process, to establish a standard operating procedure specific to each food and radiation facility. Many comments supported recordkeeping requirements and emphasized the need for personnel training and FDA inspection.

50. One comment on proposed § 179.25(c) was concerned about the training that would be required of the "qualified person with expert knowledge of radiation processing" and what Federal or State agency would license or otherwise certify a radiation processing specialist who is needed to establish scheduled processes. Another comment suggested that FDA convene a panel of experts to develop a protocol for the establishment of scheduled processes for food irradiation instead of leaving it to industry experts. The comment also suggested that the Codex Standards and the Code of Practice for irradiated food be incorporated or identified as a guideline for the establishment of a scheduled process (Ref. 70). (These documents were developed by the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations, and the World Health Organization.)

The agency has no jurisdiction over the licensing or certification of radiation processing specialists. (However, see comments regarding the training of radiation safety personnel required by the Nuclear Regulatory Commission (NRC) in the section on environmental impact elsewhere in this document.) The manufacturer is responsible for choosing individuals who are qualified by appropriate scientific training and applied experience to ensure the integrity of the food irradiation process. FDA believes that there is sufficient incentive for food manufacturers to select qualified people and that FDA need not intervene. Therefore, each manufacturer is expected to select personnel having expertise and experience in the radiation processing of food and knowledge of the requirements of the particular facility. The specialist's work experience must be documented and must demonstrate training and experience in radiation processing of food. FDA believes that a background check for such personnel would be done in any case. FDA has no plans at this time to require the licensing of such individuals or to convene a panel of experts to develop a protocol for the establishment of scheduled processes. The agency agrees that the Codex Alimentarius Standard and Code of Practice is a useful guide but sees no need to require compliance with that code by regulation.

51. One comment on proposed § 179.25(d) asked if food processors who

use irradiated ingredients in their retail products are subject to the recordkeeping requirements of this regulation.

The proposed rule and this regulation limit the maintenance of records to the food irradiation processor. Therefore, a food manufacturer who uses irradiated ingredients in foods designed for retail trade is not required to maintain records related to irradiation treatment.

52. One comment on proposed § 179.25(d) requested clarification about the length of time that records must be maintained. The comment stated that some dry foods, such as spices, may have a very long shelf life that cannot always be predicted by the processor. Another comment suggested that records be maintained only 3 years.

The proposed rule would have required the records to be kept for a period that exceeds the shelf life of the irradiated food by 1 year. FDA agrees that this requirement is not clear and is amending this regulation to require that the indicated records be retained for a period of time that exceeds the shelf life of the irradiated food by 1 year, or for 3 years, whichever period is shorter.

53. One comment stated that the allowed uses of irradiation should be specified in sufficient detail so that Federal and State officials may accurately determine whether a processor is complying with the regulations. The comment suggested that FDA consider specifying sampling procedures to monitor whether a processor is complying with the regulations.

As explained in this document, irradiation of food at the permitted safe levels does not produce amounts of unique radiolytic products sufficient to be detected using conventional food sampling and analysis techniques. Nonetheless, the agency agrees with the comment that specificity of procedures is essential to ensure that radiation processing has been properly carried out. That is why this final rule lists the permitted uses of irradiation and requires that a processor have a scheduled process for each food established by a qualified person with expert knowledge of radiation processing. The scheduled process must specify a dose range that will ensure that the absorbed dose will achieve its intended technical effect on the food being irradiated. The final rule also requires that records be kept that include, among other things, evidence of compliance with the scheduled process, source calibration, and dosimetry. Moreover, these records are to be made available for inspection by authorized employees of FDA. The agency believes that this is sufficient information to determine whether processors are complying with the regulation.

54. One comment stated that no mention is made in the regulation regarding the role of State officials. The comment expressed concern about possible questions regarding State activities in the area. The comment said that State officials might be called upon to assist FDA in enforcing the final regulation and wondered whether the final regulation ought to specify whether State activities involving food irradiation processing would be preempted under the regulation.

The act contains no specific provision preempting the field of food irradiation. The test of whether a State activity is preempted by Federal law and regulations is whether the State activity conflicts with and stands as an obstacle to the Federal program. The comment appeared to be concerned about whether State inspections or other actions in support of this final regulation would be preempted by this regulation. FDA notes that State officials routinely assist FDA in inspecting certain facilities that are within their State in order to conserve scarce agency resources. The agency has, for many years, worked closely with the States through cooperative work-sharing agreements affecting compliance with the act and its implementing regulations. These cooperative efforts would further the goal of this regulation and would not be precluded under any preemption doctrine.

55. Some comments stated that a regulation requiring access only to records is not adequate to ensure compliance, and that FDA should also propose strict monitoring or some degree of official inspection.

The agency has authority to conduct plant inspections for all food-processing plants. FDA did not intend to imply that compliance would be determined solely by inspection of records. FDA officials will inspect food irradiation plants and will copy and review required records to assure that the processor is complying with these regulations. The agency would like to clarify that it considers inspection of records to include copying of the records for further review, and is, therefore, adding the words "and copy" after "inspection" in new § 179.25(e) for the same reasons stated in the proposal for records inspection requirements (49 FR at 5719) based on sections 409, 703, and 704 of the act. Thus, if a food manufacturer chooses to engage in radiation processing of food, FDA will consider that processor to have waived any objections to the agency's requirement of inspecting and copying pertinent records with respect to irradiated foods.

56. One comment stated that testing of food irradiation dosage is limited by the accuracy of the testing dosimetry. The comment stated that the regulation must provide methods for determining the absorbed dose which can be directly related to standards of radiation maintained by the National Bureau of Standards.

The agency agrees that the accuracy of the testing dosimetry is important. Assuring accurate dosimetry is a part of developing a scheduled process. Nevertheless, optimum procedures for dosimetry may change, and FDA does not intend to limit dosimetry to any one specific system at this time. FDA would consider irradiation of food without adequate dosimetry to be a violation of the current good manufacturing practice regulations.

57. A few comments requested that the regulation permit multiple irradiations of food provided that the maximum dose limitation prescribed by regulation is not exceeded. The comments argued that there are conditions where a second radiation treatment would produce a useful effect without exceeding the maximum dose. One comment stated that the Codex Alimentarius standard for irradiated foods does permit reirradiation of foods under limited circumstances.

The agency disagrees that the regulation should permit the multiple irradiation of foods for the following reasons:

(1) An irradiated food that is properly packaged and stored should not require further irradiation to be marketable. Irradiation processing of food is not to be used as a substitute for good food sanitation practices.

(2) Where a food is irradiated more than once, the cumulative radiation dose cannot exceed the maximum allowable dose prescribed in the regulation. The determination of whether those foods that are irradiated more than once are in compliance with the regulation would be difficult and impractical, if not impossible. Inspection of irradiation records alone to determine compliance would be inadequate. Records maintained by different irradiation facilities with respect to the reirradiated food would not be available for inspection simultaneously. Moreover, if a food were irradiated in a foreign country and subsequently irradiated in the United States, the absence of records from the foreign radiation facility would make a determination of compliance with the regulation impossible.

(3) FDA is aware of the Codex Alimentarius standard concerning reirradiation of foods (Ref. 70). The Codex Alimentarius standard does not permit reirradiation of foods, except for foods with low moisture content (cereals, pulses, dehydrated foods, and other such commodities), irradiated for the purpose of controlling insect reinfestation. This same standard, however, states that a food is not considered to have been reirradiated when: (1) The food prepared from materials, which have been irradiated at low dose levels, is irradiated for another technological purpose; (ii) the food, containing less than 5 percent of an irradiated ingredient, is irradiated; or (iii) the full dose of ionizing radiation required to achieve the desired effect is applied to the food in more than one installment as part of procesing for a specific technological purpose. In accordance with 21 CFR 130.6, FDA will review all food standards adopted by the Codex Alimentarius Commission. The agency is not required, however, to accept these standards.

Although the agency may, on its own initiative, propose adoption of a Codex standard under section 401 of the act (21 U.S.C. 341), any interested person may petition the agency to adopt a Codex standard (21 CFR 130.6). Because the agency has not proposed adoption of the Codex standard regarding reirradiation of foods as part of this rulemaking, this issue requires no further discussion at this time.

(4) The agency acknowledges that there could be certain circumstances where a useful effect could be produced by reirradiating a food without exceeding the maximum dose limitation prescribed by the regulation. However, as discussed earlier in this response, the agency believes that efforts to monitor compliance with this regulation through recordkeeping and records inspection would be difficult and impractical, and may even be impossible in certain instances. A further complication that would arise should reirradiation of foods be permitted involves the difficulty of complying with the labeling requirements prescribed by the regulation. Complex labeling at the wholesale level would be needed to ensure that the maximum cumulative dose absorbed by the food does not exceed the maximum dose limitation prescribed by the regulation. Wholesale labeling would also have to convey to what extent a previously irradiated food was treated. Furthermore, such cumulative doses would have to be the minimal radiation dose reasonably required to accomplish the intended technical effects. This minimal radiation dose would be very difficult to determine if it is administered in multiple doses. These complex issues would require careful consideration by the agency during a separate evaluation. For all of these reasons, the agency has concluded that reirradiation of food should not be permitted under this regulation.

58. Some comments questioned the need for a 5 million electron volt limit for x-ray sources and stated that this energy limit should be increased to 10 million electron volts.

The 5 million electron volt limitation for x-ray sources was based on data in an earlier petition and is consistent with recommendations of the Codex Alimentarius Commission. FDA has no data demonstrating the safety of sources operating at higher energy levels; accordingly, this regulation approves the use of x-ray sources of no more than 5 million electron volts. The agency will consider changing the limitation if data supporting the safe use of x-rays produced by machines using energy sources greater than 5 million electron volts are submited in a food additive petition.

D. Other Technical Effects

59. Several comments were opposed to food irradiation because it can theoretically affect the metabolic processes of fresh foods, and thereby conceivably make them less resistant to spoilage by various fungal diseases.

The agency recognizes that irradiation affects the metabolic processes of fresh foods and may sometimes make them less resistant to spoilage. Irradiation, like other processes, will not solve all food-preservation problems and will sometimes be impractical. Food processors would probably not irradiate food if irradiation causes the food to spoil more quickly or to become less marketable. In such cases, irradiating food would be contrary to the processor's self-interest. Because the practicality of using food irradiation makes this process somewhat self-limiting, the agency concludes that it need not restrict the irradiation of fresh foods merely because some foods may be unsuited to such processing.

60. Many comments requested that FDA take a more general approach to permit irradiation up to a dose of 1 kGy on any food for any purpose consistent with current good manufacturing practice. One comment stated that the rule should be extended beyond fruits and vegetables to mushrooms and pork. Several comments asked that the safe dose be raised to 1.5 kGy (150 krad). The comments stated that 0.75 kGy (75 krad) is necessary for maximum shelf life extension of papaya, and the 1.5 kGy safe dose would allow for some latitude in designing a commercial food irradiator. One comment stated that the term "insect control" may be too restrictive and suggested "pest control." Several comments stated that a maximum dose of 1 kGy is effective for trichinae control and for microbial control in some foods.

The agency intended the term "fresh fruits and vegetables" to include mushrooms, which are fruiting bodies of fungi. The agency now believes that the term "fresh foods" may more adequately describe foods such as fruits, vegetables, and mushrooms that are capable of additional growth and maturation but that may be treated with ionizing radiation to inhibit those processes. FDA is revising the regulation accordingly. In addition, the agency agrees that the term "insect control" may be too restrictive. Therefore, the agency is substituting the term "arthropod pests" to include insects, spiders, and mites, but to exclude pests such as bacteria, molds, mice, and rats.

Although the agency believes that the safety of food irradiation below 1 kGy (100 krad) has been established, the agency proposed to limit the use of food irradiation according to intended technical effect rather than simply by dose. This was done both to avoid indiscriminate use of irradiation and to aid enforcement of dose limits because there would be no reason to exceed the permitted dose for the allowed technical effects. For example, overtreatment of fruits and vegetables may adversely affect their marketability. Thus, exceeding the permitted dose would result in a substandard product. In effect, compliance occurs due to a self-limiting factor.

In the specific case of papaya, the agency believes that an adequate commercial radiation facility can be designed for papaya with the current limitation. Alternatively, the agency will review a petition to increase the maximum permitted dose for fresh foods.

The agency is aware that the permitted dose may also be somewhat effective for other uses, such as decreasing the microbial burden in meat, fish, and poultry. FDA did not propose these uses, however, because irradiating at such low doses would not be sufficiently effective for microbial control to be self-limiting. The agency stated in the proposed rule that it would consider other uses below 1 kGy (100 krad) if a petition supported by evidence that a specific technical effect can be

accomplished below 1 kGy (100 krad) and if an appropriate food additive regulation can be promulgated and can be enforced. The agency has received petitions for the use of irradiation to control trichinae in pork at doses below 1 kGy 100 krad). As discussed earlier in this preamble, the agency issued a final rule on July 22, 1985, in response to one petition to control *Trichinella spiralis* in pork (50 FR 29658). In this document, the agency is deleting § 179.22 and is incorporating that authorization for the irradiation of pork in new § 179.26(b).

61. One comment stated that FDA's proposed rule would have relatively little impact on solving the overall problem of food spoilage and contended that FDA is apparently seeking to avoid, delay, or otherwise shelve indefinitely the approval of irradiation at higher dose levels. The comment stated there is no reason for FDA's reluctance to proceed on its own initiative to approve food irradiation at doses above 1 kGy, including radiation sterilization of chicken. Other comments stated that FDA should permit doses up to 10 kGy based on the Codex Alimentarius standard.

FDA's traditional approach to issuing a food additive regulation has been to respond to a properly documented petition. FDA initiated this rulemaking to permit food irradiation because it believed that an agency-initiated rulemaking would be more efficient for those uses where the agency needs no further safety data.

Two considerations prevent the agency, at this time, from proposing a general regulation allowing higher doses. First, at higher doses, irradiation can significantly retard microbial spoilage without killing all spores of *C. botulinum*. Under some conditions, *C. botulium* can grow and produce a toxin that constitutes a health hazard. Based on current information, the agency is unable to prescribe safe conditions of irradiation at higher doses for foods that would ensure *C. botulinum* organisms would not develop.

Second, at the doses permitted in this regulation, the total amount of radiolytic products consumed is too small to be of concern, either because of low doses or because foods so treated are a minor part of the diet. Further, safety information from animal feeding studies is unnecessary under these circumstances. The proposal stated that FDA is reviewing a number of studies to determine whether foods that are irradiated at doses above 1 kGy (100 krad) can be considered safe without additional toxicological studies. As stated elsewhere in this document, the agency has reviewed these studies and found that five were acceptable by current standards. This data base is inadequate to support a broad decision that all foods may be irradiated safely at higher doses up to 10 kGy (1 Mrad).

Therefore, FDA does not intend to initiate further rulemaking on food irradiation based on the information before it at this time. The agency will, of course, continue to evaluate and respond on a case-by-case basis to all food additive petitions involving irradiation.

62. Several comments discussed using irradiation to control microbial contamination of animal feeds. One comment stated that the agency should consider the use of irradiation to treat all animal feeds up to a maximum dose level of 25 kGy (2.5 Mrad).

The agency agrees that irradiation of animal feeds to control microbial contamination could be addressed, but not necessarily as part of this rulemaking. Ralston Purina Co. filed a food additive petition (FAP 2198) (December 18, 1984; 49 FR 49181) proposing that the regulations be amended to provide for microbial disinfection of laboratory diets for rats, mice, and hamsters by radiation treatment. The agency responded to this petition in the **Federal Register** of February 19, 1986 (51 FR 5992). Any interested person able to document the safe use of a source of radiation to treat animal feeds may submit an animal food additive petition for that use under the provisions of 21 CFR Part 571.

63. One comment stated that the agency should permit the use of radiation to sterilize meals to provide a more nutritious and palatable diet for persons who require sterile meals.

The agency is considering a separate rulemaking to permit the investigational use of unapproved food additives under section 409(i) of the act (21 U.S.C. 348(i)). That issue is not relevant to the uses of food irradiation permitted under this regulation.

64. Several comments stated that there were other alternatives to irradiation for insect control or for growth and maturation inhibition of fresh fruits and vegetables and that, therefore, there was no need to permit food irradiation.

The agency agrees that there are other methods both for insect control and to inhibit the growth and maturation of fresh fruits and vegetables. However, the existence of such methods is not a reason to prohibit equally safe alternatives, nor does the act authorize FDA to arbitrarily limit the safe alternatives that are to be allowed. The agency believes that the marketplace should determine which alternative treatment method is used when safety is not an issue.

E. Packaging

65. One comment stated that FDA should consider the possible migration of toxic substances from packaging materials to food during irradiation. Several comments noted that the proposed rule does not discuss packaging materials and that this omission may create confusion with respect to § 179.45. In addition, one comment asked specifically whether the irradiation of bulk packaging materials such as fiber drums and burlap bags is permitted even though they are not listed in § 179.45. The comment questioned the need for § 179.45 and suggested, as an alternative, granting approval for irradiation of all substances that are currently generally recognized as safe as packaging materials.

FDA points out that all packaging materials or components of packaging material that may reasonably be expected to migrate to food must comply with appropriate regulations authorizing their use. Components of packaging materials that have been irradiated may migrate to food to a different degree than components of an unirradiated material.

There are two aspects to this problem: (1) A packaging material that is irradiated before food contact may degrade or undergo crosslinking or some other change so that it is significantly different from the nonirradiated material and (2) packaging material irradiated while in direct food contact may produce low modecular weight materials that might migrate into the food.

In the first case, the irradiated material may be tested to see whether it is suitable for use in contact with food and complies with appropriate regulations. If the irradiated material is still suitable for use and complies with the applicable regulations, no additional regulations are required. If the irradiated material no longer complies with applicable regulations, interested persons may submit a food additive petition to amend the regulations accordingly.

In the second case, volatile materials migrating into prepackaged foods during irradiation would not have been considered in evaluating whether the packaging material was safe for its intended use, unless the packaging material had been specifically authorized under § 179.45. Section 179.45 lists packaging materials that may be formed into containers for holding or packaging food intended to be irradiated

and which may be subjected to incidental irradiation during the radiation treatment of prepackaged foods. This regulation was issued in response to petitions for packaging materials used with food during irradiation in anticipation of expanded uses of food irradiation in the 1960's. Therefore, the agency disagrees with the comment that § 179.45 is unnecessary.

Section 179.45, however, does not list packaging materials that are generally recognized as safe (e.g., glass, wood, natural fibers) but which may exhibit different characteristics of migration to food during irradiation. FDA knows of no information on such materials during irradiation by which they could be generally recognized as safe. Therefore, FDA does not consider such materials to be generally recognized as safe when used in packaging that is irradiated in contact with food. The agency invites petitions to amend § 179.45 to include generally recognized as safe packaging materials and other packaging materials not currently in § 179.45.

The agency agrees that the failure to address packaging in the proposal may cause confusion. Because of the possible confusion, FDA is adding a new paragraph in § 179.26 clarifying the intended requirement that packaging materials containing food during irradiation must comply with § 179.45.

F. Public Education

66. Many comments stated that a need exists for a public education campaign supported by the government and industry.

The agency agrees that there is a need for public education in this area. However, the agency is responsible for ensuring that food additives including a source of radiation are safe; FDA has no proper role as a promoter of a specific food additive or food process. The agency believes that the primary responsibility for such educational activities remains with industry in this instance.

G. Impact Analyses

The agency stated in the proposed rule that existing safeguards in regulations issued by the Occupational Safety and Health Administration (OSHA), the Nuclear Regulatory Commission (NRC), the Department of Transportation (DOT), and FDA are adequate to ensure that there will be no adverse environmental effect. However, many comments expressed concerns about the environmental impact of this regulation. These comments can be separated into three categories: (1) Radiation safety within the facility (worker safety), (2) waste storage and disposal, and (3) transportation. FDA requested a response to these comments from OSHA (Ref. 71), NRC (Ref. 72), and DOT (Ref. 73) and has summarized their responses below.

67. Several comments were concerned with worker exposure and with plant safety and claimed that current safety standards are inadequate to protect workers employed in industries handling radioactive materials.

A facility using radioactive material must first obtain a license from NRC or the corresponding agency in an agreement State. NRC has informed FDA that in order for a firm to be licensed to possess and use radioactive material in an irradiator, the firm must file an application with NRC or the corresponding State agency. The information that needs to be submitted includes the training and experience of individuals responsible for the radiation safety programs, the training provided to persons who will work under the supervision of the responsible individuals, a description of the facility, the safety systems designed to protect personnel from exposure to radiation, and the radiation protection program.

NRC states that the regulatory "Guide for the Preparation of Applications for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-contained Wet Source-Storage Irradiators, and Panoramic Wet Source-Storage Irradiators" (Ref. 74) provides guidance to potential applicants about specific details needed in an application for possession and use of radioactive material in an irradiator. The NRC staff reviews the application to determine that (1) the applicant's proposed equipment and facilities are adequate to protect health and minimize danger to life and property, (2) the applicant is qualified by training and experience to use the radioactive material for the purpose requested and in such a manner as to protect health and minimize danger to life and property, and (3) the program described will result in compliance with NRC's regulatory requirements. If the information provided in an application is satisfactory, a license is issued. After issuance, NRC conducts periodic inspections of irradiator facilities. In 1978 and 1979, NRC collected exposure data from all licensees. The average annual measurable dose for persons engaged in irradiation operations was 160 millirems. (The maximum permissible ionizing radiation dose for workers is 5,000 millirems per year.)

68. One comment stated that OSHA's ionizing radiation standard (29 CFR 1910.96) would apply to worker exposures from machine-produced radiations, but questioned the organization's ability to ensure worker safety.

In response to this comment, OSHA confirmed that its current ionizing radiation standard (29 CFR 1910.96) would apply to worker exposures to radiation from machine-produced sources. As in the past, OSHA will concentrate its inspectional resources on high priority problems, and will consider additional action should information develop indicating a need for concern.

69. Many comments were concerned about the safety of transporting radioactive materials, in general, and also argued that implementation of this regulation would lead to increased amounts of radioactive materials being transported.

Both DOT and NRC have responded to this comment. They stated that the transportation of radioactive materials is an activity which is highly regulated by both the Federal and State governments. Both DOT and NRC have regulatory requirements that govern all aspects of transportation in detail, from quality assurance in packaging to requirements for posting information that is clearly visible on transporting vehicles.

The overall safety of transporting radioactive materials was evaluated in the NRC report entitled "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes" (NUREG–0170) (Ref. 75). The report concluded that the total risk from all transportation of such materials was acceptably low. NRC has concluded, after review of the subject, that the regulations are adequate to protect the public against unreasonable risks from the transport of radioactive materials (46 FR 21619; April 13, 1981). NRC believes such shipments can be made safely because licensees shipping radioactive material for use in food irradiators are required to comply with an NRC regulatory program.

Food irradiation sources are held in the form of welded, sealed sources and are transported in accident-resistant packaging. There has never been a release of radioactive materials from one of these packages in the United States as a result of a transportation accident, even when transporting powders, liquids, or gases. The transportation of sealed sources would make a release even more unlikely.

70. One comment stated that DOT, NRC, and the States are ineffective in their regulation of transportation of radioactive materials.

DOT disagreed and stated in a letter to FDA that the approach being used by NRC, DOT, and the States has been effective in ensuring safety.

71. One comment stated that the absence of effective regulations for transporting radioactive materials has prompted over 200 local communities to impose bans or restrictions on nuclear cargo transportation in defiance of Federal preemption.

DOT advised FDA that this is a misleading statement. DOT has no evidence that the transportation of radioactive materials has caused any safety problem. DOT pointed out that there may be a myriad of reasons behind these local restrictions, many of which may be unrelated to safety. Finally, the existence of local restrictions against the transport of radioactive material provides no evidence that there is or has been a safety problem associated with such transportation.

72. One comment stated that the history of monitoring transportation of radioactive materials leaves much to be desired. The comment cited incidents reported over the past 2 years where (1) sources were simply "lost" or were found by children in public, unrestricted areas; (2) sources were accidentally mixed with scrap metal; or (3) offsite contamination from radiation byproduct facilities resulted in widespread contamination. The comment further questioned what would happen when millions of curies are added to the commercial sector, if the Federal government cannot keep track of the approximately 17,000 sources in the United States.

DOT advised FDA that the references made by the comment to lost sources are misleading. The incidents referred to did not involve sources as large as those to be used in a food irradiator. Sources that have been lost in transit in the United States have been those of very low activity or empty packages that pose relatively small risks. High activity sources such as those used for food irradiation are transported in large, heavy packages which are not likely to be easily lost. Additionally, DOT's regulations require that the shipper of such packages notify the consignee when a shipment is made so that the consignee expects it and can take prompt action if it is not delivered on time. The comment about radioactive material being mixed with scrap metal refers to an incident in which a radioactive source was incorporated into steel made from scrap metal. This incident involved international licensing authorities and had nothing to do with domestic transport.

The agency has determined that the existing controls over the transportation of radioactive materials are adequate to ensure safety even when the number of radiation sources increases, as might be expected as a result of this rule.

73. Many comments expressed concern that an increased use of radioactive materials will lead to a corresponding increase in problems regarding proper disposal of radioactive wastes and possible environmental contamination.

Under NRC's regulations, sealed sources used in an irradiator may be disposed of by transfer to an authorized recipient as specified in 10 CFR 20.301(a). An authorized recipient could be the original supplier of the sealed sources, another licensee which is authorized to possess the sealed sources, or a facility licensed to receive and dispose of radioactive wastes.

In practice, a cobalt-60 sealed source is usually returned to the original supplier at the end of its useful life. Disposal of the sealed sources could be accomplished by transfer to one of the existing facilities authorized to dispose of radioactive waste materials. In the United States, these facilities are located in the States of South Carolina, Nevada and Washington. With respect to the cesium-137 capsules which the Department of Energy (DOE) has available for use in irradiators, DOE will lease the capsules to licensees and the capsules will be returned to DOE at the end of their useful life.

The agency believes that these measures are adequate to safeguard against possible environmental contamination.

74. Many comments were concerned that food irradiation might cause the formation of mutant pathogens. One comment stated that an environmental impact statement must be filed for this reason by the agency before further action is taken.

The agency considered the potential environmental impact of permitting food irradiation and concluded that an environmental impact statement was not required, and submitted this finding of no significant impact and environmental assessment to the docket for public review, as noted in the proposal. No new information or comments have been received that would alter the agency's previous determination. A response to the comment that mutant pathogens may result during food irradiation has been provided earlier in this document.

75. Various comments on the economic impact of this process stated that this process would provide consumers with a greater variety and quantity of foods than that now available because of quarantine restrictions or limited shelf life. Other comments stated that the process is expensive and thus would increase the price of food. Comments from industry stated that the costs involved in commissioning a facility would require a broader range of uses to make the operation financially viable.

The agency believes that the marketplace will determine whether irradiation of food is economically feasible. No information was provided to suggest that issuance of this final rule would pose an unacceptable economic burden on society.

III. Objections

Any person who will be adversely affected by this regulation may at any time on or before May 19, 1986 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following sources referred to in this document are listed below. Documents with an asterisk (*) have been placed on display in the Dockets Management Branch (address above), and may be seen between 9 a.m. and 4 p.m., Monday through Friday. All the references not on display are available as published articles, reports, and books.

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5. *Cancer Assessment Committee, Center for Food Safety and Applied Nutrition, Memorandum of Conference, October 1, 1984, and January 4, 1985.

6. *National Toxicology Program Board of Scientific Counselors, Final Summary Minutes for the "Peer Review of the Data from the Raltech Lifetime Feeding Study with Irradiated Chicken Meat in CD–1 Mice by the Technical Reports Review Subcommittee and Panel of Experts," held at Research Triangle Park, NC, March 28, 1985.

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16. *Holsten, R.D., M. Sugii, and F.C. Steward, "Direct and Indirect Effects of Radiation on Plant Cells: Their Relation to Growth and Growth Induction," *Nature*, 208:850–856, 1965.

17. *Aiyar, A.S., and S. Rao, "Studies on Mutagenicity of Irradiated Sugar Solutions in *Salmonella typhimurium*," *Mutation Research*, 48:17–28, 1977.

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19. *Diehl, J.F., et al., "Radiolysis of Carbohydrates and of Carbohydrate-containing Foodstuffs," *Journal of Agricultural and Food Chemistry*, 26:15–20, 1978.

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V. Agency Action

FDA has evaluated over 5,000 comments as well as information already in FDA's files and concludes that the proposed use of ionizing radiation is safe and that the regulations should be amended as set forth below.

The agency assessed the impact of the proposed rule on current and future uses of irradiation technology (February 14, 1984; 49 FR 5714). This assessment demonstrated that the proposed rule was not a major rule as defined by Executive Order 12291.

Further, it was determined that the rule would not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. In order to accurately reflect changes in this final rule made in response to comments, FDA has prepared a revised threshold assessment of the economic effects of this rule. The findings of this assessment do not alter the agency's previous assessment. Therefore, the agency hereby finds that this is not a major rule as defined by that Order and certifies in accordance with section 605(b) of the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (February 14, 1984; 49 FR 5714). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Section 179.25(e) of this final rule contains a collection of information requirement. FDA submitted a copy of the proposed rule containing the same requirement to the Office of Management and Budget (OMB). This collection of information requirement was approved for use through March 31, 1987 (OMB Control No. 0910–0186).

List of Subjects in 21 CFR Part 179

Food additives, Food packaging, Irradiation of foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 179 is amended as follows:

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF FOOD

1. The authority citation for 21 CFR Part 179 is revised to read as set forth below and the authority citations under 21 CFR 179.21 and 179.45 are removed.

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10; §§ 179.25 and 179.26 also are issued under secs. 402, 403, 703, 704, 52 Stat. 1046–1048 as amended, 1057, 67 Stat. 477 as amended (21 U.S.C. 342, 343, 373, 374); 21 CFR 5.10, 5.11.

§ 179.22 [Removed]

2. By removing § 179.22 *Gamma radiation for the treatment of food.*

§ 179.24 [Removed]

3. By removing § 179.24 *Low-dose electron beam radiation for the treatment of food.*

4. By adding new § 179.25, to read as follows:

§ 179.25 General provisions for food irradiation.

For the purposes of § 179.26, current good manufacturing practice is defined to include the following restrictions:

(a) Any firm that treats foods with ionizing radiation shall comply with the requirements of Part 110 of this chapter and other applicable regulations.

(b) Food treated with ionizing radiation shall receive the minimum radiation dose reasonably required to accomplish its intended technical effect and not more than the maximum dose specified by the applicable regulation for that use.

(c) Packaging materials subjected to irradiation incidental to the radiation treatment and processing of prepackaged foods shall comply with § 179.45.

(d) Radiation treatment of food shall conform to a scheduled process. A scheduled process for food irradiation is a written procedure that ensures that the radiation dose range selected by the food irradiation processor is adequate under commercial processing conditions (including atmosphere and temperature) for the radiation to achieve its intended effect on a specific product and in a specific facility. A food irradiation processor shall operate with a scheduled process established by qualified persons having expert knowledge in radiation processing requirements of food and specific for that food and for that irradiation processor's treatment facility.

(e) A food irradiation processor shall maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, up to a maximum of 3 years, whichever period is shorter, and shall make these records available for inspection and copy by authorized employees of the Food and Drug Administration. Such records shall include the food treatment, lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

[Collection of information requirements approved by the Office of Management and Budget under control number 0910-0186]

5. By adding new § 179.26, to read as follows:

§ 179.26 Ionizing radiation for the treatment of food.

Ionizing radiation for treatment of foods may be safely used under the following conditions:

(a) *Energy sources.* Ionizing radiation is limited to:

(1) Gamma rays from sealed units of the radionuclides cobalt-60 or cesium-137.

(2) Electrons generated from machine sources at energies not to exceed 10 million electron volts.

(3) X-rays generated from machine sources at energies not to exceed 5 million electron volts.

(b) *Limitations.*

Use	Limitations
For control of *Trichinella spiralis* in pork carcasses or fresh, non-heat-processed cuts of pork carcasses.	Minimum dose 0.3 kGy (30 krad); Maximum dose not to exceed 1 kGy (100 krad).
For growth and maturation inhibition of fresh foods.	Not to exceed 1 kGy (100 krad).
For disinfestation of arthropod pests in food.	Do.
For microbial disinfection of dry or dehydrated enzyme preparations (including immobilized enzymes).	Not to exceed 10 kGy (1 Mrad).
For microbial disinfection of the following dry or dehydrated aromatic vegetable substances: culinary herbs, seeds, spices, teas, vegetable seasonings, and blends of these aromatic vegetable substances. Turmeric and paprika may also be irradiated when they are to be used as color additives. The blends may contain sodium chloride and minor amounts of dry food ingredients ordinarily used in such blends.	Not to exceed 30 kGy (3 Mrad).

(c) *Labeling.* (1) The label and labeling of retail packages of foods irradiated in conformance with paragraph (b) of this section shall bear the following logo

along with either the statement "Treated with radiation" or the statement "Treated by irradiation" in addition to information required by other regulations. The logo shall be placed prominently and conspicuously in conjunction with the required statement.

(2) For irradiated foods not in package form, the required logo and phrase "Treated with radiation" or "Treated by irradiation" shall be displayed to the purchaser with either (i) the labeling of the bulk container plainly in view or (ii) a counter sign, card, or other appropriate device bearing the information that the product has been treated with radiation. As an alternative, each item of food may be individually labeled. In either case, the information must be prominently and conspicuously displayed to purchasers. The labeling requirement applies only to a food that has been irradiated, not to a food that merely contains an irradiated ingredient but that has not itself been irradiated.

(3) For a food, any portion of which is irradiated in conformance with paragraph (b) of this section, the label and labeling and invoices or bills of lading shall bear either the statement "Treated with radiation—do not irradiate again" or the statement "Treated by irradiation—do not irradiate again" when shipped to a food manufacturer or processor for further processing, labeling, or packing.

(4) The wording requirements of paragraphs (c)(1) and (2) of this section pertaining to the label and labeling of retail packages of food shall expire April 18, 1988, unless extended by the Food and Drug Administration by publication for notice and comment in the **Federal Register.**

Frank E. Young,

Commissioner of Food and Drugs.

Dated: March 29, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86-8684 Filed 4-15-86; 11:05 am]

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Part IV

Department of Labor

Wage and Hour Division

29 CFR Part 553

Application of the Fair Labor Standards Act to Employees of State and Local Governments; Proposed Rules

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 553

Application of the Fair Labor Standards Act to Employees of State and Local Governments; General

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations for the implementation of sections 2, 3, 5, and 6 of the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150). The existing regulations in 29 CFR Part 553 are being restructured and retitled "Application of the Fair Labor Standards Act to Employees of State and Local Governments." This new Subpart A, published herewith, contains rules with respect to certain statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions applicable to State and local government workers. A new Subpart C, published elsewhere in this issue, applies to fire protection and law enforcement employees, which was the only subject of the prior Part 553. Subpart B, also published separately, contains rules regarding the statutory requirements concerning exclusion from the definition of "employee", and thus from coverage under the Act, of individuals who volunteer their services to State and local governments. It also sets forth rules concerning the status of individuals who are employees of State and local governments and who volunteer services to their employing agency or to another State or local government agency.

DATE: Comments are due on or before June 2, 1986.

ADDRESS: Submit comments to Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1985, the Fair Labor Standards Amendments of 1985 were enacted into law. These amendments changed certain provisions of the Fair Labor Standards Act (FLSA) as they relate to employees of State and local governments. After the decision by the U.S. Supreme Court in *Garcia* v. *San Antonio Metropolitan Transit Authority et al. (Garcia),* 105 S. Ct. 1005 (February 19, 1985), holding that the FLSA may constitutionally be applied to State and local governments, representatives of many State and local government employer and employee organizations identified several areas in which they believed they would be adversely affected by immediate application of the FLSA.

One major area of concern was the requirement under the FLSA that all overtime work be compensated immediately in cash, thereby rendering impermissible the provision of compensatory time off in lieu of monetary compensation. Another key concern involved special employment situations, such as those in which an employee works for two separate employers or in two separate capacities for the same employer. Prior to the Amendments, the FLSA required in many cases that all of the hours worked be combined in such situations for purposes of determining overtime liability. There was also concern about the additional financial burdens imposed by the FLSA on State and local governments.

The enacted legislation responded to these and other concerns by including special provisions in the FLSA which apply only to employees of State and local governments.

In the case of compensatory time, the primary purpose of the changes is to permit State and local governments to give time off under certain conditions in lieu of immediate overtime pay in cash. In the case of special employment situations, the purpose of the changes is to permit State and local government employees to continue to work for two employers, or in different capacities for the same employer, in certain limited situations without requiring combination of the hours worked in the two jobs for purposes of calculating compensation under the FLSA.

Prior Legislation

In 1966, Congress amended the FLSA to cover certain publicly operated institutions, principally schools and hospitals. The constitutionality of this coverage was upheld in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968). Subsequently in 1974, Congress again amended the Act and extended coverage to virtually all State and local governmental activities. Those amendments were again challenged as unconstitutional, and in *National League of Cities* v. *Usery (NLOC)* 426 U.S. 833 (1976) the Supreme Court overruled its earlier decision in *Maryland* v. *Wirtz*. The Court held that the FLSA could not constitutionally be applied to "traditional" governmental functions.

In *Garcia*, the issue before the courts was whether the FLSA was unconstitutional as applied to public mass transit systems. On February 19, 1985, the U.S. Supreme Court issued its decision overruling *NLOC* in its entirety, concluding that the "traditional governmental function" test is unworkable and "inconsistent with established principles of federalism."

Summary of Rule

This Subpart is divided into twenty sections. Sections 553.1–553.3 contain definitions of terms, a discussion of the purpose and scope of the regulations, and a general statement of coverage. Sections 553.10–553.12 address certain exclusions from coverage. Sections 553.20–553.28 covers (1) the exception authorizing State or local public agencies to provide compensatory time off in lieu of monetary overtime compensation, (2) the limits on the amount of compensatory time that can be accumulated by employees in specific activities or occupations before monetary overtime compensation must be paid, (3) the conditions for use of compensatory time, (4) cash overtime payments, (5) payments for accrued but unused compensatory time, and (6) the treatment of "other" compensatory time under the FLSA.

Sections 553.30–553.32 set forth other exceptions from the Act's overtime requirements for (1) occasional or sporadic employment in a different capacity, (2) substitution of work by one employee for another, and (3) other FLSA exemptions from minimum wage and/or overtime requirements which may apply to employees of public agencies.

Finally, § 553.50–553.51 cover the requirements for maintenance and preservation of certain records pertaining to compensatory time and employees paid pursuant to section 7(k).

In developing the proposed rules, the Department met informally with representatives of State and local government employer and employee organizations to discuss issues concerning the application of the FLSA to public agencies. As a result of these

meetings, many major areas of concern were fully explored. The Department particularly invites comments on these major issues which are summarized below:

(1) *Section 3(e)(2)(C) Exclusions*—The 1974 Amendments exclude from the definition of "employee", and thus from coverage, certain individuals employed by public agencies, namely, elected public officials, their immediate advisors, and appointees. The Department believes that the legislative language provides little discretion in the application of these exclusions. The proposed rules incorporate interpretations adopted by the Department following the enactment of the 1974 Amendments.

(2) *Agreements on Compensatory Time*—The 1985 Amendments permit the use of compensatory time in lieu of cash overtime wages under certain conditions, provided that an agreement or understanding between the employer and employees is reached prior to the performance of the work. In the Department's view, the employer always retains the option *under the FLSA* to pay for statutory overtime hours worked in cash. At the same time, the Department recognized that other constraints (such as State or local law, collective bargaining agreements, or other agreements between employers and employees) may restrict or eliminate the employer's rights to exercise this option. However, the Department cannot either through these regulations or enforcement actions, delineate any conditions or circumstances *under the FLSA* which would deny the employer's right to pay overtime hours in cash.

(3) *"Public Safety", "Emergency Response", and "Seasonal Activities"*—The 1985 Amendments provide that employees in these categories of employment are subject to a limit of 480 hours on the accrual of compensatory time, instead of the 240-hour limit applicable to all other State and local government workers. The Department believes that the definitions of these terms in the proposed rules adhere to the language and legislative history of the Amendments, and that it is not feasible to delineate more specific conditions for the application of these provisions. The Department will be guided by its administrative experience under the Amendments in applying this provision to specific employment situations.

(4) *"Reasonable Period"*—The 1985 Amendments provide that an employee of a public agency who has accrued compensatory time off shall be permitted to use such time off within a "reasonable period" after making a request, if such use does not "unduly disrupt" the operations of the agency. It has been suggested that the Department adopt an absolute time frame for what constitutes a "reasonable period", such as two weeks, one month, etc. However, the Department believes that what constitutes a "reasonable period" depends on the facts and circumstances surrounding the request. For example, an employee who requests the use of a half-hour of compensatory time off should not be subject to the same time constraints for a "reasonable period" as an employee who requests the use of three weeks of compensatory time off.

Executive Order 12291

Virtually all State and local government workers became subject to the Fair Labor Standards Act's minimum wage and overtime pay requirements as a result of the 1974 Amendments to the Act. These amendments were challenged as unconstitutional, and in *National League of Cities* v. *Usery* (*NLOC*), 426 U.S. 833 (1976), the U.S. Supreme Court held that the FLSA could not constitutionally be applied to "traditional" governmental functions. Thus, following the *NLOC* decision, the minimum wage and overtime requirements of the FLSA were limited to the employees of a small number of "nontraditional" government functions (including alcoholic beverage stores, off-track betting corporations, electric power generation and distribution, telephone and telegraphic communication, railroad operations, and a few others identified in Regulations 29 CFR Part 775). The cost impact of the FLSA's requirements on State and local governments following the *NLOC* decision, therefore, amounted to a small percentage of the total wage bill for public agencies.

With the U.S. Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et al. (Garcia)*, 105 S.Ct. 1005 (February 19, 1985), which overruled *NLOC* in its entirety, the FLSA's minimum wage and overtime pay requirements again became applicable to virtually all nonexempt State and local government employees. At Congressional hearings prior to enactment of the 1985 Amendments to the FLSA, State and local government employer groups and representatives of their employees presented estimates of the cost impact of the FLSA's application to employees public agencies. These estimates varied widely. The estimates of employer representatives ranged from $2- to $3-billion annually, while estimates of employee representatives ranged from $200- to $500-million annually.

One stated purpose of the 1985 Amendments to the FLSA was to moderate the cost impact of the broad application of the Act's minimum wage and overtime pay requirements that would have occurred following the *Garcia* decision. The general belief expressed at Congressional hearings prior to passage of the amendments was that the cost impact of FLSA coverage on State and local governments would be reduced sharply as a result of this consensus legislation. The reduction in costs was achieved by statutory revisions permitting the continuation of longstanding personnel practices with respect to public employees that would otherwise have been impermissible under the FLSA. These included: The use of compensatory time off with pay for overtime hours worked in lieu of immediate cash overtime wages; the employment, under certain conditions, of public agency employees in more than one job; the use of police and fire personnel to perform services on special details for other public and private agencies; and the widespread acceptance of certain types of services on a volunteer basis by both public agency employees and the public at large.

The Department has reached the preliminary conclusion that this is a major rule in that it may have an annual impact on the economy of $100 million or more. The Department bases this conclusion on its belief that the 1985 Amendments greatly reduced the costs that affected State and local governments would have otherwise incurred as a result of the *Garcia* decision. Although the Department has reached this preliminary conclusion, it does not currently have sufficient data to accurately estimate the full extent of this impact. Therefore, the Department is especially interested in receiving comments on the economic impact of the *Garcia* decision, the 1985 FLSA Amendments, in and of themselves, and these amendments as implemented by the proposed regulations. Commenters are specifically asked to provide estimates of the annual dollar cost impact (and percentage impact, as appropriate), and the basis therefore, in each of the following areas:

(1) The 1985 Amendments provide that, under certain conditions, State and local government employees can be provided with paid time off (compensatory time) in lieu of immediate cash overtime compensation for overtime hours worked. Will this provision result in an impact on costs to public agencies? If so, what is the estimate of this impact?

(2) The Amendments provide that public agency employees who have accrued 240 hours of compensatory time off (480 for employees engaged in public safety, emergency response, and seasonal activities) must receive time and one-half their regular rates of pay in immediate cash wages for any additional overtime hours worked. What is the estimate of the impact of this provision?

(3) To what extent is overtime work in public agencies likely to be more limited in light of the 1985 Amendments? The Department would appreciate the submission of estimates of this impact both in terms of overtime hours worked and overtime wages paid.

(4) To what extent will employees' wages be required to be increased to the Federal minimum wage of $3.35 an hours? The Department would appreciate the submission of estimates of this impact both in terms of the number of employees affected and increased costs.

In providing data in response to the above, the Department would find it useful if comparative estimates are provided for the following time period categories: (1) Post-*NLOC*, but pre-*Garcia* decision; (2) post-*Garcia* decision, but pre-1985 Amendments; (3) post-1985 Amendments (without regard to the proposed implementing regulations); and (4) post-implementation of the regulations as they are proposed.

Initial Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency Is Being Considered

On November 13, 1985 the Fair Labor Standards Amendments (the amendments) were enacted into law. These amendments changed certain provisions of the Fair Labor Standards Act (FLSA) as they relate to employees of State and local governments. Section 6 of the amendments requires the Secretary of Labor to promulgate such regulations as may be required to implement the amendments. This proposed rule is being issued to implement sections 2, 3, 5, and 6 of the amendments.

(2) Objectives of and Legal Basis for Rule

This proposed rule is issued pursuant to section 6 of the FLSA amendments of 1985. Its objective is to guide State and local government employers and employees in applying the 1985 Amendments.

(3) Number of Small Entities Covered Under Rule

This proposed rule would apply to all State and local government employers (approximately 83,000) covered by the provisions of the Fair Labor Standards Act (29 U.S.C. 201 et seq.). Approximately 50,000 of such employers would be classified as small governmental jurisdictions under the Regulatory Flexibility Act (governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand).

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The proposed rule would establish a recordkeeping requirement for State and local government employers with respect to the maintenance and preservation of records for each public employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, as well, as for each employee subject to the partial overtime exemption in section 7(k) of the Act.

(5) Relevent Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements. Certain similar recordkeeping is required by the Internal Revenue Service (IRS) in 26 CFR Part 31. However, while the FLSA and IRS recordkeeping require similar information, the FLSA regulations do not require duplication of those records required by IRS.

(6) Differing Compliance and Recordkeeping Requirements

The regulatory language set forth in this Subpart closely tracks the requirements imposed by the language of the FLSA amendments and accompanying legislative history. The burdens imposed by these requirements on employers are generally those imposed by statute, and the Department of Labor has no discretion to make exceptions under the statutory scheme.

However, the Department conducted informal discussions with employer and employee representatives to explore possible regulatory alternatives. The goal was to insure that the regulations did not depart from Congressional intent in establishing limited circumstances under which compensatory time could be provided in lieu of monetary overtime compensation that would otherwise be required. The conclusion was reached that there was no viable alternative to specifying the statutory requirements and reflecting the legislative intent in the definitions of critical terms, including exceptions to and exemptions from the overtime and compensatory time requirements.

As for the minimal recordkeeping requirements included in this regulation, it was decided that a standard format would not be required of employers. Employers can thus decide which method of recordkeeping best suits their circumstances. This will help those small entities that have limited resources for recordkeeping. Under the proposed rule, small entities can maintain required information in any order or form deemed most appropriate to their needs.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the recordkeeping requirements in the proposed rule simplify the task of employers now covered under the Act, especially small entities, by permitting the use of any format for collecting and preserving essential information which meets the needs of FLSA enforcement.

(8) Use of Other Standards

Appropriate alternative standards that would impose even less regulatory burdens on covered employers, especially small entities, are not available.

(9) Exemptions of Small Entities From Coverage of the Rule

An exemption from the recordkeeping requirements of the proposed rule for small entities is not feasible, since records are necessary for the enforcement of the Act regardless of the size of the entity.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 553

Minimum wages, overtime pay, State and local government employees. Accordingly, it is proposed to revise 29 CFR Part 553 to read as set forth below:

Signed at Washington, D.C. on this 14 day of April 1986.

William E. Brock,

Secretary of Labor.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

PART 553—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Subpart A.—General

Introduction

Sec.

Section 3(e)(2)(c)—Exclusions

Section 7(o)—Compensatory Time and Compensatory Time Off

Other Exemptions

Recordkeeping

Authority: Secs. 1–19, 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–150, 99 Stat. 787 (29 U.S.C. 203, 207, 211).

Subpart A—General

Introduction

§ 553.1 Definitions.

(a) "Act" or "FLSA" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201–219).

(b) "1985 Amendments" means the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150).

(c) "Public agency" or "State or local government" means the government or any agency of a State, a political subdivision of a State or an interstate governmental agency.

(d) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other Territory or possession of the United States (29 U.S.C. 203(c) and 213(f)).

§ 553.2 Purpose and scope.

(a) The 1985 Amendments to the Fair Labor Standards Act (FLSA) changed certain provisions of the Act as they apply to employees of State and local public agencies. The purpose of Part 553 is to set forth the regulations to carry out the provisions of these Amendments, as well as other FLSA provisions previously in existence relating to such public agency employees.

(b) The regulations in this part are divided into three subparts. Subpart A interprets and applies the special FLSA provisions that are generally applicable to all covered and nonexempt employees of State and local governments. Subpart A also contains provisions concerning certain individuals (i.e., elected officials, their appointees, and legislative branch employees) who are excluded from the definition of "employee" and thus from FLSA coverage. This subpart also interprets and applies sections 7(o), and 7(p)(2), 7(p)(3), and 11(c) of the Act regarding compensatory time off, occasional and sporadic part-time employment, and the performance of substitute work by public agency employees, respectively.

(c) Subpart B of this part deals with "volunteer" services performed by individuals for public agencies. Subpart C applies various FLSA provisions as they relate to fire protection and law enforcement employees of public agencies.

§ 553.3 Coverage—general.

(a)(1) In 1966, Congress amended the FLSA to extend coverage to State and local government employees engaged in the operation of hospitals, nursing homes, schools, and mass transit systems.

(2) In 1972, the Education Act Amendments further extended coverage to employees of public preschools.

(3) In 1974, the FLSA Amendments extended coverage to virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 legislation.

(b) Certain definitions already in the Act were modified by the 1974 Amendments. The definition of the term "employer" was changed to include public agencies and that of "employee" was amended to include individuals employed by public agencies. The definition of "enterprise" contained in section 3(r) of the Act was modified to provide that activities of a public agency are performed for a "business purpose." The term "enterprise engaged in commerce or in the production of goods for commerce" defined in section 3(s) of the Act was expanded to include public agencies.

Section 3(e)(2)(C) Exclusions

§ 553.10 General.

Section 3(e)(2)(C) of the Act excludes from the definition of "employee", and thus from coverage, certain individuals employed by public agencies. This exclusion applies to elected public officials, their immediate advisors, and certain individuals whom they appoint or select to serve in various capacities. In addition, the 1985 Amendments exclude employees of legislative branches of State and local governments. A condition for exclusion is that the employee must not be subject to the civil service laws of the employing State or local agency.

§ 553.11 Exclusion for elected officials and their appointees.

(a) Section 3(e)(2)(C) provides an exclusion from the Act's coverage for officials elected by the voters of their jurisdictions. Also excluded under this provision are personal staff members and officials in policymaking positions who are selected or appointed by the elected public officials and certain advisers to such officials.

(b) The statutory term "member of personal staff" generally includes only persons who are under the direct supervision of the selecting elected official and have regular contact with such official. The term typically does not include the elected official's personal secretary, but would not include the secretary to an assistant.

(c) In order to qualify as personal staff members or officials in policymaking positions, the individuals in question must not be subject to the civil service rules of their employing agencies. Among the factors evidencing this type of relationship are:

(1) The work is performed outside of any position or occupation established by a table of organization as part of a legislative, executive, or judicial branch, or a committee or commission established by such a branch;

(2) The individual serves at the pleasure of the elected official; and

(3) The person's compensation is dependent upon a specific appropriation or paid out of an office expense allowance provided to the elected official.

(d) The exclusion for "immediate adviser" to elected officials is limited to staff who serve as advisers on constitutional or legal matters, and who are not subject to the civil service rules of their employing agency.

§ 553.12 Exclusion for employees of legislative branches.

(a) Section 3(e)(2)(C) of the Act provides an exclusion from the definition of the term "employee" for individuals who are not subject to the civil service laws of their employing agencies and are employed by legislative branches or bodies of States, their political subdivisions or interstate governmental agencies.

(b) Employees of State or local legislative libraries do not come within this statutory exclusion. Also, employees of school boards, other than elected officials and their appointees (as discussed in § 553.11), do not come within this exclusion.

Section 7(o)—Compensatory Time and Compensatory Time Off

§ 553.20 Introduction.

Section 7(a) of the FLSA requires that covered, nonexempt employees receive not less than time and one-half their regular rates of pay for hours over forty in a workweek. However, section 7(o) of the Act provides an element of flexibility to State and local government employers and an element of choice to their employees regarding compensation for statutory overtime hours. The exemption provided by this subsection authorizes a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, to provide compensatory time off (with certain limitations, as provided in § 553.21) in lieu of monetary overtime compensation that would otherwise be required. Compensatory time received by an employee in lieu of cash must be at the premium rate of not less than one and one-half hours of compensatory time for each hour of overtime work, just as the monetary rate for overtime is calculated at the premium rate of not less than time and one-half the regular rate of pay.

§ 553.21 Statutory provisions.

Section 7(o) provides as follows:

(o)(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) Pursuant to—

(i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) In the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) If the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

(3) (A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation (in cash).

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) The average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) The final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) Who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) Who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) The term "overtime compensation" means the compensation required by subsection (a), and

(B) The terms "compensatory time" and "compensatory time off" means hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

§ 553.22 "FLSA compensatory time" and "FLSA compensatory time off".

(a) Compensatory time and compensatory time off are interchanageable terms under the FLSA. Compensatory time off is paid time off the job which is earned and accrued by an employee in lieu of immediate cash payment for employment in excess of the statutory hours for which overtime compensation is required by section 7 of the FLSA.

(b) The Act requires that compensatory time under section 7(o) be earned at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by section 7 of the FLSA. Thus, the 480 hour limit on accrued compensatory time represents not more than 320 hours of actual overtime worked, and the 240 hour limit represents not more than 160 hours of actual overtime worked.

(c) The 480 and 240 hour limits on accrued compensatory time only apply to overtime hours worked after April 15, 1986. Compensatory time which an employee has accrued prior to April 15, 1986, is not subject to the overtime requirements of the FLSA and need not be aggregated with compensatory time accrued after that date.

§ 553.23 Agreement prior to performance to work.

(a) *General.* (1) As a condition for use of compensatory time off in lieu of overtime payment in cash, section 7(o)(2)(A) of the Act requires an agreement or understanding reached prior to the performance of work. This can be accomplished pursuant to a collective bargaining agreement, a memorandum of understanding or any other agreement between the public agency and representatives of the employees. If the employees do not have a representative, compensatory time may be used in lieu of cash overtime compensation only if such an agreement or understanding has been arrived at between the public agency and the individual employee before the performance of work.

(2) Agreements may provide that compensatory time off in lieu of overtime payment in cash may be restricted to certain hours of work only. In addition, agreements may provide for any combination of compensatory time off and overtime payment in cash (e.g., one hour compensatory time credit plus

one-half the employee's regular hourly rate of pay in cash for each hour of overtime worked) so long as the premium pay principle of at least "time and one-half" is maintained. The agreement or understanding may include other provisions governing the preservation, use, or cashing out of compensatory time off so long as these provisions do not conflict with any section of the Act.

(b) *Agreement between the public agency and a representative of the employees.* (1) Where employees have a representative, the agreement or understanding concerning the use of compensatory time off must be between the representative and the public agency either through collective bargaining or through a memorandum of understanding or other type of agreement. In the absence of a collective bargaining agreement applicable to the employees, the representative need not be a formal or recognized bargaining agent as long as the representative is designated by the employees. Any agreement must be in conformance with the provisions of section 7(o) of the Act.

(2) Section 2(b) of the 1985 Amendments provides that a collective bargaining agreement in effect on April 15, 1986, which permits compensatory time off in lieu of overtime compensation will remain in effect until the expiration date of the collective bargaining agreement unless otherwise modified. However, compensatory time off provided after April 14, 1986, must be in accordance with the requirements of section 7(o) of the Act and these regulations.

(c) *Agreement between the public agency and individual employees.* (1) Where employees of a public agency do not have a recognized representative, the agreement or understanding concerning compensatory time off must be between the public agency and the individual employee and must be reached prior to the performance of work. This agreement or understanding with individual employees need not be in writing, but a record of its existence must be kept. (See § 553.50.) An employer need not adopt the same agreement or understanding with different employees and need not provide compensatory time to all employees. The agreement or understanding to provide compensatory time off in lieu of cash overtime compensation may take the form of an express condition of employment, provided (i) the employee knowingly and voluntarily agrees to it as a condition of employment and (ii) the employee is informed that the compensatory time received may be preserved, used or cashed out consistent with the provisions of section 7(o) of the Act. An agreement or understanding may be evidenced by a notice to the employee that compensatory time off will be given in lieu of overtime pay. In such a case, an agreement or understanding would be presumed to exist for purposes of section 7(o) with respect to any employee who fails to express to the employer an unwillingness to accept compensatory time off in lieu of overtime pay, and who accepts compensatory time in lieu of overtime pay after being so notified.

(2) Section 2(a) of the 1985 Amendments provides that in the case of employees who have no representative and were employed prior to April 15, 1986, a public agency that has had a regular practice of awarding compensatory time in lieu of overtime pay is deemed to have reached an agreement or understanding with these employees as of April 15, 1986. A public agency need not secure an agreement or understanding with each employee employed prior to that date. If, however, such a regular practice does not conform to the provisions of section 7(o) of the Act, it must be modified to do so with regard to practices after April 14, 1986. With respect to employees hired after April 14, 1986, the public employer who elects to use compensatory time must follow the guidelines on agreements discussed in paragraph (a)(1) of this section.

§ 553.24 "Public safety", "emergency response", and "seasonal" activities.

(a) Section 7(o)(3)(A) of the FLSA provides that an employee of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, may accumulate not more than 480 hours of compensatory time off after April 15, 1986, if the employee is engaged in "public safety", "emergency response", or "seasonal" activity. Employees whose work includes "seasonal", "emergency response", or "public safety" activities, as well as other work, will not be subject to both limits of accrual for compensatory time off. If the employee's work regularly involves the activities included in the 480-hour limit, the employee will be covered by that limit. A public agency cannot utilize the higher cap by simple classification or designation of an employee. The work performed is controlling. Assignment of occasional duties within the scope of the higher cap will not entitle the employer to use the higher cap. Employees whose work does not regularly involve "seasonal", "emergency response", or "public safety" activities are subject to a 240-hour compensatory time accrual limit. (See H. Rep. 99–331, pp 21–22.)

(b) "Public Safety Activities": The term "public safety activities" as used in section 7(o)(3)(A) of the Act includes law enforcement, fire fighting or related activities as described in §§ 553.210 (a) and (b) and § 553.211 (a) thru (c), and (f). An employee whose work regularly involves such activities will qualify for the 480-hour accrual limit. However, the 480-hour accrual limit will not apply to office personnel or other civilian employees who may perform public safety activities only in emergency situations, even if they spend substantially all of their time in a particular week in such activities. For example, a maintenance worker employed by a public agency who is called upon to perform fire fighting activities during an emergency would remain subject to the 240-hour limit, even if such employee spent an entire week or several weeks in a year performing public safety activities. Certain employees who work in "public safety" activities for purposes of section 7(o)(3)(A) may qualify for the partial overtime exemption in section 7(k) of the Act. (See § 553.201)

(c) "Emergency Response Activity": The term "emergency response activity" as used in section 7(o)(3)(A) of the Act includes dispatching of emergency vehicles and personnel, rescue work and ambulance services. As is the case with "public safety" and "seasonal" activities, an employee must regularly engage in "emergency response" activities to be covered under the 480-hour limit. A city office worker who may be called upon to perform rescue work in the event of a flood or snowstorm would not be covered under the higher limit, since such emergency response activities are not a regular part of the employee's job. Certain employees who work in "emergency response" activities for purposes of section 7(o)(3)(A) may qualify for the partial overtime exemption in section 7(k) of the Act. (See § 553.215.)

(d) (1) "Seasonal activity": The term "seasonal activity" includes work during periods of significantly increased demand, which are of a regular and recurring nature. In determining whether employees are considered engaged in a seasonal activity, the first consideration is whether the activity in which they are engaged is a regular and recurring aspect of the employee's work. The second consideration is whether the projected compensatory time due to overtime hours during the period of significantly increased demand is likely

to result in the accumulation of more than 240 (the number of compensatory time hours available under the lower cap). Such projections will normally be based on the employer's past experience with similar employment situations.

(2) Seasonal activity is not limited strictly to those operations that are very susceptible to changes in the weather. As an example, employees processing tax returns over an extended period of significantly increased demand whose overtime hours could be expected to exceed the lower cap may qualify as engaged in a seasonal activity.

(3) While parks and recreation activity is primarily seasonal because peak demand is generally experienced in fair weather, mere periods of short but intense activity do not make an employee's job seasonal. For example, clerical employees working increased hours for several weeks on a special project or assigned to an afternoon of shoveling snow off the courthouse steps, would not be considered engaged in seasonal activities, since the increased activity could be accommodated within the lower 240-hour limit. Further, persons employed in municipal auditoriums, threaters, and sports facilities that are open for specific, limited seasons would be considered engaged in seasonal activities, while those employed in facilities that operate year round generally would not.

(4) Road crews, while not necessarily seasonal workers, may have significant periods of peak demand, for instance during the snow plowing season or road construction season. The snow plow operator/road crew employee may be able to accrue compensatory time to the higher cap, while other employees of the same department who do not have lengthy periods of peak seasonal demand would remain under the lower cap.

§ 553.25 Conditions for use of compensatory time ("reasonable period", "unduly disrupt").

(a) Section 7(o)(5) of the FLSA provides that any employee of a public agency who has accrued compensatory time off and requested use of this compensatory time, shall be permitted to use such time off within a "reasonable period" after making the request, if such use does not "unduly disrupt" the operations of the agency.

(b) *Reasonable Period.* (1) Whether a request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices within the agency based on the facts and circumstances in each case. Such practices include, but are not limited to (a) the normal schedule of work, (b) anticipated peak workloads based on past experience, (c) emergency requirements for staff and services, and (d) the availability of qualified substitute staff.

(2) The use of compensatory time must be pursuant to some form of agreement between the employer and the employee reached prior to the performance of the work. (See § 553.23.) To the extent that the use of compensatory time is governed by a bona fide agreement as defined by § 553.23, the terms of such agreement or the understanding of the parties will govern the meaning of "reasonable period".

(c) *Unduly Disrupt.* When an employer receives a request for compensatory time off, it shall be honored unless to do so would be "unduly disruptive" to the agency's operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off. (See H. Rep. 99–331, p. 23.) For an agency to turn down a request from an employee for compensatory time requires that it should reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

§ 553. 26 Cash overtime payments.

(a) Overtime compensation due under section 7 may be paid in cash at the employer's option, in lieu of providing compensatory time off under section 7(o) of the Act in any workweek or work period. The FLSA does not prohibit an employer from freely substituting cash, in whole or part, for compensatory time off; and overtime payment in cash would not affect subsequent granting of compensatory time off in future workweeks or work periods. (See § 553.23(a)(2).)

(b) The principles for computing cash overtime pay are contained in 29 CFR Part 778. Cash overtime compensation must be paid at a rate not less than one and one-half times the regular rate at which the employee is actually paid. (See 29 CFR 778.107.)

(c) In a workweek or work period during which an employee works hours which are overtime hours under FLSA and for which cash overtime payment will be made, and the employee also takes compensatory time off, the payment for such time off may be excluded from the regular rate of pay under section 7(e)(2) of the Act. Section 7(e)(2) provides that the regular rate shall not be deemed to include ". . . payments made for occasional periods when no work is performed due to vacation, holiday, . . . or other similar cause." As explained in 29 CFR 778.218(d), the term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, illness, and so forth. Payments made to an employee for periods of absence due to the use of accrued compensatory time off are considered to be the type of payments in this "other similar cause" category.

§ 553.27 Payments for unused compensatory time.

(a) Payments for accrued compensatory time off may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(b) Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than—

(1) The average regular rate received by such employee during the last 3 years of the employee's employment, or

(2) The final regular rate received by such employee, whichever is higher.

(c) The term "regular rate" is defined in § 778.108 of 29 CFR Part 778. As indicated in § 778.109, the regular rate is an hourly rate, although the FLSA does not require employers to compensate employees on an hourly basis.

§ 553.28 Other compensatory time.

(a) Compensatory time which is earned and accrued by an employee for employment in excess of a nonstatutory (that is, non-FLSA) requirement is considered "other" compensatory time. The term "other" compensatory time off means hours during which an employee is not working and which are not counted as hours worked during the period when used. For example, a collective bargaining agreement may provide for compensatory time (in addition to straight-time wages) to be granted to employees for hours worked in excess of 8 in a day, or for working on a scheduled day off in a nonovertime workweek. The FLSA does not require compensatory time to be granted in such situations.

(b) Compensatory time which is earned and accrued by an employee working hours in excess of those established by local law or ordinance but which are not overtime hours under section 7 of the FLSA is also considered "other" compensatory time. For example, a local law or ordinance may require compensatory time to be given to employees for hours worked in excess of 35 in a workweek. Under the FLSA,

only hours worked in excess of 40 in a workweek are overtime hours which must be compensated in accordance with section 7.

(c) Similarly, compensatory time earned or accrued by an employee for employment in excess of a standard established by the personnel policy or practice of an employer, or by custom, which does not result from the FLSA provision, is another example of "other" compensatory time.

(d) The FLSA does not require that the rate at which "other" compensatory time is earned has to be at a rate of one and one-half hours for each hour of employment. The rate at which "other" compensatory time is earned may be some lesser or greater multiple.

(e) The maximum statutory compensatory time which may be accrued by employees under section 7 of the FLSA (480 hours for those engaged in a public safety, emergency response, or seasonal activity and 240 hours for all other employees) is not affected by the accrual of "other" compensatory time as described above.

Other Exemptions

§ 553.30 Occasional or sporadic employment-section 7(p)(2).

(a) Section 7(p)(2) of the FLSA provides that where State or local government employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime liability under the Act.

(b) *"Occasional or sporadic".* (1) The term "occasional or sporadic" means infrequent, irregular, or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of public services which is at times best met by the part-time employment of an individual who is already a public employee. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(2) In order for an employee's occasional or sporadic work on a part-time basis to qualify for exemption under section 7(p)(2), the employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer. An employer may suggest that an employee undertake another kind of work for the same unit of government when the need for assistance arises, but the employee must be free to refuse to perform such work without sanction and without being required to explain or justify the decision. The employee's decision to perform such work will be considered to have been made at his/her sole option when the employee has not been threatened with reprisal or promised reward.

(3) Typically, public recreation and park facilities, and stadiums or auditoriums utilize employees in occasional or sporadic work. Some of these employment activities are the taking of tickets, providing security for special events (e.g., concerts, sports events, and lectures), officiating at youth or other recreation and sports events, or engaging in food or beverage sales at special events, such as a county fair. Employment in such activity may be considered occasional or sporadic for regular employees of State or local government agencies even where the need can be anticipated because it recurs seasonally (e.g., a holiday conert at a city college, a program of scheduled sports events, or assistance by a city payroll clerk in processing returns at tax filing time). An activity does not fail to be occasional merely because it is recurring. In contrast, for example, if a parks department clerk, in addition to his or her regular job, also regularly works additional hours on a part-time basis (e.g., every week or every other week) at a public park food and beverage sales center operated by that agency, the additional work does not constitute intermittent and irregular employment and, therefore, the hours worked would be combined in computing any overtime compensation due.

(c) *"Different capacity".*

(1) In order for employment in these occasional or sporadic activities not to be considered subject to the overtime requirements of section 7 of the FLSA, the regular government employment of the individual performing them must also be in a different capacity, i.e., it must not fall within the same general occupational category.

(2) In general, the Administrator will consider the criteria of education, experience, duties, skills, and knowledge contained in the definitions of occupations in the Dictionary of Occupational Titles, as well as by all the facts and circumstances in a particular case, in determining whether employment in a second capacity is substantially different from the regular employment.

(3) For example, if a public park employee primarily engaged in playground maintenance also from time to time cleans an evening recreation center operated by the same agency, the additional work would be considered hours worked for the same employer and subject to the Act's overtime requirements because it is not in a "different capacity". This would be the case even though the work was "occasional or sporadic", and, was not regularly scheduled. Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a "different capacity".

(4) However, if a bookkeeper for a municipal park agency or a city mail clerk occasionally referees for an adult evening basketball league sponsored by the city, the hours worked as a referee would be considered to be in a different general occupational category than the primary employment and would not be counted as hours worked for overtime purposes on the regular job. A person regularly employed as a bus driver may assist in crowd control, for example, at an event such as a winter festival, and in doing so, would be deemed to be serving in a different capacity.

§ 553.31 Substitution—section 7(p)(3).

(a) Section 7(p)(3) of the FLSA provides that two individuals employed in any occupation by the same public agency may agree, solely at their option and with the approval of the public agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked shall be excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under the Act. Where employees trade hours, each employee will be credited as if he or she had worked his or her normal work schedule for that shift.

(b) The provisions of section 7(p)(3) apply only if employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An employer may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction and without

being required to explain or justify the decision. An employee's decision to substitute will be considered to have been made at his/her sole option when it has been made (i) without fear of reprisal or promise of reward, and (ii) primarily for the employee's own convenience.

(c) A public agency which employs individuals who substitute or "trade time" under this subsection is not requires to keep a record of the hours of the substitute work.

(d) In order to qualify under section 7(p)(3), an agreement between individuals employed by a public agency to substitute for one another at their own option must be approved by the agency. This required that the agency be aware of the arrangement prior to the work being done, i.e., the employer must know what work is being done, by whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

§ 553.32 Other FLSA exemptions.

(a) There are other exemptions from the minimum wage and/or overtime requirements of the FLSA which may apply to certain employees of public agencies.

(b) Section 7(k) of the Act provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). In addition, section 13(b)(20) prvides a complete overtime pay exemption for any employee of a public agency engaged in fire protection or law enforcement activities, if the public agency employs less than five employees in such activities. (See Subpart C of this Part.)

(c) Section 13(a)(1) of the Act provides an exemption from both the minimum wage and overtime pay requirements for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity, as these terms are defined and delimited in Part 541 of this title. An employee will qualify for exemption if he or she meets all of the pertinent tests relating to duties, responsibilities, and salary.

(d) Section 7(j) of the Act provides that a hospital or residential care establishment may, pursuant to a prior agreement or understanding with an employee or employees, adopt a fixed work period of 14 consecutive days for the purpose of computing overtime pay in lieu of the regular 7-day workweek. Workers employed under section 7(j) must receive not less than one and one-half times their regular rates of pay for all hours worked over 8 in any workday, and over 80 in the 14-day work period. (See § 778.601 of this Title.)

(e) Section 13(a)(3) of the Act provides a minimum wage and overtime pay exemption for any employee employed by an amusement or recreational establishment if (1) it does not operate for more than 7 months in any calendar year or (2) during the preceding calendar year, its average receipts for any 6 months of such year were not more than 33⅓ percent of its average receipts for the other 6 months of such year. In order to meet the requirements of section 13(a)(3)(B), the establishment in the previous year must have received at least 75 percent of its income within 6 months. The 6 months, however, need not be 6 consecutive months. State and local governments operate parks and recreational areas to which this exemption may apply.

(f) Section 13(b)(1) of the Act provides an exemption from the overtime pay requirements for "Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935." (recodified at section 3102, 49 U.S.C.). With regard to State or local governments, this overtime pay exemption may affect mass transit systems engaged in interstate commerce. This exemption is applicable to drivers, driver's helpers, loaders, and mechanics employed by a common carrier whose activities directly affect the safety of operation of motor vehicles in the transportation on the public highways of passengers or property. (See Part 782 of this title.)

(g) Section 7(n) of the Act provides that, for the purpose of computing overtime pay, the hours of employment of a mass transit employee do not include the time spent in charter activities if (1) pursuant to a prior agreement the time is not to be so counted, and (2) such charter activities are not a part of the employee's regular employment.

(h) Additional overtime pay exemptions which may apply to emloyees of public agencies are contained in sections 13(b)(2) (employees of certain common carriers by rail), 13(b)(9) (certain employees of small market radio and television stations), and section 13(b)(12) (employees in agriculture) of the Act. Further, section 13(a)(6) of the Act provides a minimum wage and overtime pay exemption for agricultural employees who work on small farms. (See Part 780 of this Title.)

Recordkeeping

§ 553.50 Records to be kept of compensatory time.

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by § 516.2 of 29 CFR Part 516 and, in addition:

(a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half for each overtime hour worked;

(b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;

(c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and

(d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

§ 553.51 Records to be kept for employees paid pursuant to section 7(k).

For each employee subject to the partial overtime exemption in section 7(k) of the Act, a public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall maintain and preserve records containing the information and data required by § 553.50 and, in addition, make some notation on the payroll records which shows the work period for each employee and which indicates the length of that period and its starting time. If all the workers (or groups of workers) have a work period of the same length beginning at the same time on the same day, a single notation of the time of day and beginning day of the work period will suffice for these workers.

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29 CFR Part 553

Application of the Fair Labor Standards Act to Employees of State and Local Governments; Volunteers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations for the implementation of section 4 of the Fair Labor Standards Amendments of 1985 (Pub. L. 99–150) 29 U.S.C. 203 et seq., concerning the use of volunteers by State and local government agencies. Existing 29 CFR Part 553 is being restructured and retitled, "Application of the Fair Labor Standards Act to Employees of State and Local Governments." This new Subpart B published herewith addresses the statutory requirements concerning exclusion from the definition of "employee", and thus from coverage under the Act, of individuals who volunteer their services to State and local governments and who receive no compensation other than expenses, reasonable benefits, nominal fees, or a combination thereof. It also contains the requirements concerning individuals who are employees of State and local governments and who also volunteer services to their employing agency or to another State or local government agency.

A new Subpart A is also being added, containing rules with respect to certain statutory exclusions and exemptions, recordkeeping requirements, and compensatory time provisions applicable to State and local government workers. A new Subpart C applies to fire protection and law enforcement employees, which was the only subject in the prior Part 553. Both of these subparts are being published elsewhere in this issue for notice and comment.

DATE: Comments are due on or before June 2, 1986.

ADDRESS: Submit comments to Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and House Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1985, the Fair Labor Standards Amendments of 1985 were enacted into law. These amendments change certain provisions of the Fair Labor Standards Act (FLSA) as they relate to employees of State and local governments. After the decision by the U.S. Supreme Court in *Garcia* v. *San Antonio Metropolitan Transit Authority et al. (Garcia)*, 105 S. Ct. 1005 (February 19, 1985), holding that the FLSA may constitutionally be applied to State and local governments, many State and local government employers identified several areas in which they believed they would be adversely affected by immediate application of the FLSA. A key area of concern was the possibility that volunteer activities undertaken for humanitarian purposes would be discouraged or impeded by application of existing FLSA law and regulations. The enacted legislation responded to this and other concerns by amending certain provisions of the FLSA with respect to employees of State and local governments. In the case of volunteer services, the Amendments make it clear that persons performing volunteer services for State and local governments should not be regarded as "employees" under the statute, and that employees of public agencies may perform volunteer services for their agencies without compensation under certain conditions.

Prior Legislation

In 1966, Congress amended the FLSA to cover certain publicly operated institutions, principally schools and hospitals. The constitutionality of this coverage was upheld in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968). Subsequently in 1974, Congress again amended the Act and extended coverage to virtually all State and local governmental activities. Those amendments were again challenged as unconstitutional, and in *National League of Cities* v. *Usery (NLOC)*, 426 U.S. 833 (1976), the Supreme Court overruled its earlier decision in *Maryland* v. *Wirtz*. The Court held that the FLSA could not constitutionally be applied to "traditional" governmental functions.

In the *Garcia* case the issue before the courts was whether the FLSA was unconstitutional as applied to public mass transit systems. On February 19, 1985, the U.S. Supreme Court issued its decision overruling *NLOC* in its entirety, concluding that the "traditional governmental function" test is unworkable and "inconsistent with established principles of federalism."

Summary of Rule

This Subpart is divided into six sections, containing the substantive regulations relating to individuals who volunteer their services to agencies of State and local governments.

Section 553.100 states the purpose and scope of the regulations.

Section 553.101 provides the definition of "volunteer" under the FLSA with respect to persons who donate their services to State or local government agencies.

Sections 553.102 and 553.103 provide guidance on the application of the law to employment by the "same public agency" in the "same type of services" as used in section 3(e)(4)(ii) of the FLSA. This section of the Act does not permit an individual to perform work as a volunteer for a public agency when the work involves the same type of services as the individual is employed to perform for the same public agency.

Section 553.104 covers volunteer services for public agencies performed by individuals who are not public employees.

Section 553.105 covers mutual aid agreements between two or more States, political subdivisions thereof, or interstate governmental agencies, which do not change the otherwise volunteer character of the services performed by employees of such agencies pursuant to such an agreement.

Section 553.106 covers the payment of expenses, benefits, or fees to volunteers.

In developing the proposed rules, the Department met informally with representatives of State and local government employer and employee organizations to discuss issues concerning the application of the FLSA to public agencies. As a result of these meetings, two major areas of concern were identified. The Department particularly invites comments on these major issues which are summarized below:

(1) *Separate Agencies*—The 1985 Amendments provide that State or local government employees may volunteer to perform the same type of service as that for which they are employed, provided that the service is performed for a different agency. The Department considered interpreting the term "agency" to be an entire State or political subdivision thereof. The proposed rules, however provide that the issue of whether the volunteer service is performed by a public agency employee for the same or different public agency can only be determined

by the facts in a given situation, one factor being whether the two agencies are treated separately for reporting purposes in the *Census of Governments* published by the Bureau of the Census.

(2) *Expenses, Benefits, and Fees*—The 1985 Amendments provide that bona fide volunteers do not lose their volunteer status by receiving reimbursement for "expenses", "reasonable benefits", or "nominal fees". The Department is sensitive to the concerns expressed that the proposed regulations permit the continuation of legitimate volunteer practices while insuring that such practices do not lead to abuses. The proposed regulations provide that whether the payment of expenses, benefits or fees is permissible will be determined within the context of the economic realities in a given situation, taking into account a variety of factors.

Executive Order 12291; Regulatory Flexibility Act

The Department has determined that this proposal is not a major rule under Executive Order 12291, since it is not likely to result in a major increase in costs for State or local governmental agencies. This proposed rule implements section 4 of the Fair Labor Standards Amendments of 1985 which sets forth the circumstances under which individuals may volunteer their services to State and local government agencies without being considered employees for purposes of the minimum wage and overtime provisions of the FLSA.

By clarifying that the monetary requirements of the FLSA do not apply to bona fide volunteers, the Congress intended to relieve State and local governments of a potential economic and financial burden. These regulations provide guidance to State and local governments in identifying bona fide volunteers who are not subject to the minimum wage and overtime requirements of the Act. While there are no precise data or reliable estimates, the Department believes that implementation of this rule will not result in a major increase in costs or prices for State and local governments, nor will it have an annual effect on the economy of $100 million or more. However, the Department invites comment and data on this conclusion.

The Department believes further that the rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) does not apply because there are no reporting or recordkeeping provisions included in these regulations.

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 553

Minimum wages, Volunteers, Overtime pay.

Accordingly, it is proposed to amend 29 CFR Part 553 by adding a new Subpart B to read as set forth below:

Signed at Wasington, DC on this 14 day of April 1986.

William E. Brock,

Secretary of Labor.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

PART 553—[AMENDED]

1. The authority citation for Part 553 would continue to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–150, 99 Stat. 787 (29 U.S.C. 203, 207, 211).

2. Part 553 is amended by adding Subpart B to read as follows:

PART 553—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Subpart B—Volunteers

Sec.

Subpart B—Volunteers

§ 553.100 General.

Section 3(e) of the Fair Labor Standards Act, as amended in 1985, provides that individuals performing volunteer services for units of State and local governments should not be regarded as "employees" under the statute. The purpose of this subpart is to define the circumstances under which individuals may perform hours of volunteer service for units of State and local governments without being considered to be their employees during such hours for purposes of the FLSA.

§ 553.101 "Volunteer" defined.

(a) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours. Individuals performing hours of service for such a public agency will be considered volunteers for the time so spent and not subject to sections 6, 7, and 11 of the FLSA when such hours of service are performed in accord with sections 3(e)(4) (A) and (B) of the FLSA and the guidelines in this subpart.

(b) Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but expressly condemned any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to "volunteer" their services.

(c) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

(d) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.

§ 553.102 Employment by the same public agency.

(a) Section 3(e)(4)(A)(ii) of the FLSA does not permit an individual to perform hours of volunteer service for a public agency when such hours involve the same type of services which the individual is employed to perform for the same public agency.

(b) Whether two agencies of the same State or local government constitute the same public agency can only be determined on a case-by-case basis. One factor that would support a conclusion that two agencies are separate is whether they are treated separately for reporting purposes in the Census of Governments issued by the Bureau of the Census, U.S. Department of Commerce.

§ 553.103 "Same type of services" defined.

(a) The 1985 Amendments provide that employees may volunteer hours of service to their public employer or agency provided "such services are not the same type of services which the individual is employed to perform for such public agency." Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase "same type of services" means similar or identical services. The more dissimilar the volunteer service activities are compared to those performed during the employee's paid employment, the more clear that such hours are not compensable hours under the Act.

(b) An example of an individual performing services which constitute the "same type of services" is a nurse employed by a State hospital who proposes to volunteer to perform nursing services at a State-operated health clinic which does not qualify as a separate public agency as discussed in 553.102. Similary, a firefighter cannot volunteer as a firefighter for the same public agency.

(c) Examples of volunteer services which do not constitute the "same type of services" include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter; and an office employee of a city hospital or other health care institution who volunteers to spend time with a disabled or elderly person in the same institution during off duty hours as an act of charity.

§ 553.104 Private individuals who volunteer services to public agencies.

(a) Individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of such public agencies if their of service are provided with no promise or expectation of compensation for the services rendered.

(b) Examples of services which might be performed on a volunteer basis when so motivated include helping out in a sheltered workshop or providing personal services to the sick or the elderly in hospitals or nursing homes; assisting in a school library or cafeteria; or driving a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer as firefighters or auxiliary police, or volunteer to perform such tasks as working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

§ 553.105 Mutual aid agreements.

An agreement between two to more States, political subdivisions, or interstate governmental agencies for mutual aid does not change the otherwise volunteer character of services performed by employees of such agencies pursuant to said agreement. For example, where Town A and Town B have entered into a mutual aid agreement related to fire protection, a firefighter employed by Town A who also is a volunteer firefighter for Town B will not have his or her hours of volunteer service for Town B counted as part of his or her hours of employment with Town A. The mere fact that services volunteered to Town B may in some instances involve performance in Town A's geographic jurisdiction does not require that the volunteer's hours are to be counted as hours of employment with Town A.

§ 553.106 Payment of expenses, benefits, or fees.

(a) Volunteers may be paid expenses, reasonable benefits, a nominal fee, or any combination thereof, for their service without losing their status as volunteers.

(b) An individual who performs hours of service as a volunteer for a public agency may receive payment for expenses without being deemed an employee for purposes of the FLSA. A school guard does not become an employee because he or she receives a uniform allowance, or reimbursement for reasonable cleaning expenses or for wear and tear on personal clothing worn while performing hours of volunteer service. (A uniform allowance must be reasonably limited to relieving the volunteer of the cost of providing or maintaining a required uniform from personal resources.) Such individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.

(c) Individuals do not lose their status as volunteers because they are reimbursed for tuition, transportation and meal costs involved in their attending classes intended to teach them to perform efficiently the services they provide or will provide as volunteers. Likewise, the volunteer status of such individuals is not lost if they are provided books, supplies, or other materials essential to their volunteer training or reimbursement for the cost thereof.

(d) Individuals do not lose their volunteer status if they are provided reasonable benefits by a public agency for whom they perform volunteer services. Benefits would be considered reasonable, for example, when they involve inclusion of individual volunteers in group insurance (such as service-related liability, health, life, disability, workers' compensation) otherwise maintained by the public agency for their employees who perform the same services as the volunteers.

(e) Individuals do not lose their volunteer status if they receive a nominal fee from a public agency. Whether a fee is nominal shall be considered in the context of the economic realities of the total situation. A nominal fee is not a substitue for compensation and must not be tied to productivity. The following factors will be examined in determining whether a given amount is nominal: The distance traveled and the time and effort expended by the volunteer; whether the volunteer has agreed to be available around-the-clock or only during certain specified time periods; and whether the volunteer provides services as needed or throughout the year. An individual who volunteers to provide periodic services on a year-round basis may receive a nominal monthly or annual stipend or fee without losing volunteer status.

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29 CFR Part 553

Application of the Fair Labor Standards Act to Employees of State and Local Governments; Fire Protection and Law Enforcement Employees of Public Agencies

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: With this document, the Department proposes to incorporate into regulations concerning State and local government fire protection and law enforcement personnel, rule changes needed to reflect the Fair Labor Standards Amendments of 1985 (Pub. L. 99-150). The existing regulations set forth in 29 CFR part 553 are proposed to

be restructured and retitled "Application of the Fair Labor Standards Act to Employees of State and Local Governments", and this proposed document would be identified as Subpart C of that part. In addition, the proposed document would incorporate into the regulations the results of a study published in the **Federal Register** on September 8, 1983 (Vol. 48, No. 175), and thereby reflect the current maximum hours standards for employees of public agencies engaged in fire protection or law enforcement activities (including security personnel in correctional institutions) who qualify for the partial overtime exemption under section 7(k) of the FLSA. Subpart A, published elsewhere in this issue, sets forth rules concerning exclusions, exemptions, compensatory time, and special recordkeeping requirements generally applicable to State and local government workers. Subpart B, also published elsewhere in this issue, provides rules for individuals who volunteer their services to State and local governments. In addition, that subpart sets forth the requirements regarding employees of such public agencies who also volunteer services to State and local governments.

In developing the proposed regulations, the Department met informally with representatives of State and local government employer and employee organizations to discuss issues concerning the application of the FLSA to public agencies. These meetings served to identify the principal areas of concern on a wide range of matters concerning the new regulations.

DATE: Comments are due on or before June 2, 1986.

ADDRESS: Submit comments to Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Phone (202) 523–8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 13, 1985, the Fair Labor Standards Amendments of 1985 were enacted into law. These amendments change certain provisions of the Fair Labor Standards Act (FLSA) as they relate to employees of State and local governments. After the decision by the U.S. Supreme Court in *Garcia* v. *San Antonio Metropolitan Transit Authority et al. (Garcia)*, 105 S. Ct. 1005 (February 19, 1985), holding that the FLSA may constitutionally be applied to State and local governments, representatives of many State and local government employer and employee organizations identified areas in which they believed the application of the FLSA would have adverse effects. A key area of concern was the requirement under the FLSA that all overtime work be compensated immediately in cash, thereby rendering impermissible the provision of compensatory time off in lieu of monetary compensation. Another issue involved special employment situations, such as those involving fire protection and law enforcement personnel who choose to work in a separate capacity on special details to other public or private employers. Prior to the 1985 Amendments, the FLSA required in many cases that all of the hours worked be combined in such situations for purposes of determining overtime liability. The enacted legislation responded to these and other concerns by amending the existing law to include special provisions applicable to public agencies.

In addition to reflecting the statutory changes of the 1985 Amendments, the proposed rules in this subpart update the maximum hours standards for fire protection and law enforcement personnel who are subject to the partial overtime exemption in section 7(k) of the FLSA. The revised maximum hours standards, which resulted from Department of Labor studies that were required by section 6(c)(3) of the 1974 Amendments, were previously published in the **Federal Register** on September 8, 1983 (Vol. 48, No. 175).

Background

In 1966, Congress amended the FLSA to cover employees of certain publicly-operated institutions, principally schools and hospitals. The constitutionality of this extension of coverage under the Act was upheld by the U.S. Supreme Court in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968). The Education Amendments of 1972 further extended FLSA coverage to employees of public preschools. Virtually all of the remaining State and local government employees who were not covered as a result of the 1966 and 1972 FLSA Amendments were brought under the coverage of the Act by the 1974 Amendments. These amendments were challenged as unconstitutional and in *National League of Cities* v. *Usery (NLOC)*, 426 U.S. 833 (1976), the Supreme Court overruled its earlier decision in *Maryland* v. *Wirtz*. In *NLOC*, Court held that the minimum wage and overtime provisions of the FLSA could not be applied constitutionally to State and local government employees who are engaged in traditional governmental activities, including firefighters and law enforcement personnel. However, the Court also held that these provisions could be applied constitutionally to public agency employees engaged in non-traditional activities.

In the *Garcia* case, the issue before the courts was whether the FLSA was unconstitutional as applied to employees of public mass transit systems. On February 19, 1985, the U.S. Supreme Court issued its decision overruling *NLOC* in its entirety. As a result of this decision, State and local government employees engaged in traditional governmental functions, including fire protection and law enforcement personnel, became subject to the minimum wage and overtime provisions of the FLSA.

Department of Labor Studies of Average Hours in Tours of Duty of Fire Protection and Law Enforcement Personnel

The Department was required by section 6(c)(3) of the 1974 Amendments to conduct studies of the average hours in tours of duty for fire protection and law enforcement personnel. The numbers of hours in these average tours, if less than 216 hours in work periods of 28 days, were to become the maximum hours standards for personnel employed under the partial overtime exemption in section 7(k) of the FLSA. Section 6(c)(3) states as follows:

> The Secretary of Labor shall in the calendar year beginning January, 1976, conduct (A) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in fire protection activities, and (B) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in law enforcement activities (including security personnel in correctional institutions). The Secretary shall publish the results of each such study in the Federal Register.

As required by the 1974 Amendments to the FLSA, the Department conducted studies of the average hours in tours of duty in calendar year 1975 of fire

protection and law enforcement personnel. However, in light of the *NLOC* decision, the data on State and local government employees engaged in such work were initially excluded in calculating the average tours of duty. The only data included were those associated with federal firefighters and law enforcement personnel. The results of the studies were challenged on various grounds, and in *Jones* v. *Donovan,* 25 WH Cases 380 (D.D.C. 1981), aff'd per curiam, No. 81–1615 (D.C. Cir., March 2, 1982), the court held that the Department had erred in failing to take into consideration the hours worked by State and local government employees engaged in such activities. In accordance with the district court's order, the Department recalculated the average hours by including the data on State and local government employees. The final results of the studies were published in the **Federal Register** on September 8, 1983, as required by the 1974 Amendments (48 FR 40518).

For public employees engaged in fire protection activities, the average number of hours in tours of duty in work periods of 28 consecutive days in calendar year 1975 was 212 hours. Consequently, the maximum hours standard for such workers employed under the section 7(k) exemption is 212 hours for work periods of 28 consecutive days (or a correspondingly lower number of hours for a shorter work period).

For public employees engaged in law enforcement activities (including security personnel in correctional institutions), the average number of hours in tours of duty in work periods of 28 consecutive days in calendar year 1975 was 171 hours. Consequently, the maximum hours standard for such workers employed under the section 7(k) exemption is 171 hours (or a correspondingly lower number of hours for a shorter work period).

Summary of Proposed Rule

Sections 553.200–533.202 contain the general principles relating to the complete overtime exemption under section 13(b)(20) of the FLSA for employees of public agencies engaged in fire protection or law enforcement activities where the agency employes fewer than five such employees in these activities, and the partial overtime exemption under section 7(k) of the Act for public fire protection and law enforcement personnel.

Sections 553.210–553.215 set forth the definitions of terms and the requirements for application of the section 13(b)(20) and 7(k) exemptions. Section 553.214 contains the rules under which trainees may be included in the definition of law enforcement and fire protection personnel for purposes of the section 7(k) exemption. The Department is aware that practices vary between jurisdictions in that some trainees have the power to arrest and some do not. In order to provide for uniform application of the section 7(k) exemption, it is proposed to eliminate the requirement that law enforcement trainees attending police academies or similar training facilities have the power to arrest. This would apply only to trainees who are currently attending such facilities and who meet all the other applicable tests for the section 7(k) exemption.

Section 553.216 clarifies that other FLSA exemptions can apply to employees subject to the section 13(b)(20) and 7(k) exemptions.

Sections 553.220–553.226 set forth the definitions and rules governing the "tour of duty" and compensable hours of work for employees subject to the section 7(k) exemption, including rules concerning sleep time, meals, work periods, early relief, and training time. With respect to the sleep and meal time rules, the Conference Report for the 1974 Amendments to the FLSA directed the Department to establish new regulations on what constitutes compensable hours of work in a "tour of duty" for employees subject to the section 7(k) exemption. The existing regulations in 29 CFR Part 553 depart from the general rule which permits the deduction of sleep and meal periods for tours of duty of *24 hours or more,* and permit such deductions in the case of fire protection and law enforcement personnel employed under section 7(k) only for tours of duty of *more than 24 hours.* Shortly after the issuance of these rules in 1975, the Wage and Hour division issued an opinion letter which stated that, with respect to police officers, meal periods could be excluded from compensable hours under cetain conditions. The proposed regulations follow the policy adopted in the 1975 opinion letter in permitting the exclusion of bona fide meal periods from compensable hours for law enforcement personnel who are employed under the section 7(k) exemption.

Section 553.226(c) incorporates into the regulations long-standing interpretations concerning time spent in attendance at specialized or follow-up training which is required by law for certification of employees. The proposed regulations clarify that the Department intends to apply the same hours worked principles to both public and private workers with respect to such specialized training.

Section 553.227 sets forth rules under section 7(p)(1) of the FLSA for excluding from hours worked the time spent by fire protection and law enforcement personnel in special details for a separate and independent employer (public or private) during their off-duty hours.

Sections 553.230–553.233 set forth rules for compensatory time-off and overtime compensation for employees subject to the 7(k) exemption who are employed in work periods of between 7 and 28 days.

A number of additional editorial changes to the existing regulations are proposed for purposes of clarity and organization.

Classification

The Department is proposing to revise the existing regulations on State and local government fire protection and law enforcement personnel to conform these rules to the statutory changes resulting from the 1985 Amendments to the FLSA. All such changes to the existing rules with respect to such workers (such as new rules regarding the substitution of compensatory time-off for overtime pay compensation, the treatment of hours worked for employees who participate in special details to other employers, and the exclusion of meal periods for law enforcement personnel) would result in a reduction of costs to public agencies. The additional changes to the existing regulations concerning the maximum hours standards for fire protection and law enforcement personnel under section 7(k) have no cost impact on State and local government agencies. With respect to these changes, the Department is merely incorporating into the regulations the current overtime standards for section 7(k) which have been in effect since their publication in the **Federal Register** on September 8, 1983 (vol. 48, No. 175). for these reasons, the Department believes an analysis of the costs and benefits of the proposed rules under Executive Order 12291 is not required. However, the Department invites comments on this conclusion and the submission of any available cost data.

Regulatory Flexibility Act

For the reasons noted above, the proposed rule, if promulgated, will not have a significant effect on a substantial number of small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

Paperwork Reduction Act

The proposed rules are not subject to the Paperwork Reduction Act, 44 U.S.C. 3504(h), since they do not involve the collection of information from the public.

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 553

Firefighters, Government employees, Law enforcement officers, Prisons, Wages.

Accordingly, it is proposed to amend 29 CFR Part 553 as set forth below:

Signed at Washington, DC, on this 14 day of April, 1986.

William E. Brock,

Secretary of Labor.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

PART 553—[AMENDED]

1. The authority citation for Part 553 would continue to read as follows:

Authority: Secs. 1–19, 52 Stat. 1060, as amended (29 U.S.C. 201–219); Pub. L. 99–150, 99 Stat. 787 (29 U.S.C. 203, 207, 211).

2. Part 553 is amended by adding Subpart C to read as follows:

Subpart C—Fire Protection and Law Enforcement Employees of Public Agencies

General Principles

Sec.

Exemption Requirements

Tour of Duty and Compensable Hours of Work Rules

Overtime Compensation Rules

Subpart C—Fire Protection and Law Enforcement Employees of Public Agencies

General Principles

§ 553.200 Statutory provisions: section 13(b)(2)).

(a) Section 13(b)(20) of the FLSA provides a complete overtime pay exemption for "any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than five employees in fire protection or law enforcement activities, as the case may be."

(b) In determining whether a public agency qualifies for the section 13(b)(20) exemption, the fire protection and law enforcement activities are considered separately. Thus, if a public agency employs less than five employees in fire protection activities, but five or more employees in law enforcement activities (including security personnel in a correctional institution), it may claim the exemption for the fire protection employees but not for the law enforcement employees. No distinction is made between full-time and part-time employees, and both must be counted in determining whether the exemption applies. Individuals who are not considered "employees" for purposes of the FLSA by virtue of section 3(e) of the Act including persons who are volunteers within the meaning of § 553.101, are not counted in determining whether the section 13(b)(20) exemption applies.

(c) The section 13(b)(20) exemption applies on a workweek basis. It is therefore possible that employees may be subject to maximum hours standard in certain workweeks, but not in others. In those workweeks in which the section 13(b)(20) exemption does not apply, the public agency is entitled to utilize the section 7(k) exemption which is explained below in § 553.201.

§ 553.201 Statutory provisions: section 7(k).

(a) Section 7(k) of the Act provides a partial overtime pay exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. This section of the Act formerly permitted public agencies to pay overtime compensation to such employees in work periods of 28 consecutive days only after 216 hours of work. As further set forth in § 553.230 below, the 216-hour standard has been replaced, pursuant to the study mandated by the statute, by 212 hours for fire protection employees and 171 hours for law enforcement employees. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 (or 171) hours to 28 days.

(b) As specified in §§ 553.20–553.28 of Subpart A, workers employed under section 7(k) may, under certain conditions, be compensated for overtime hours worked with compensatory time off rather than immediate overtime premium pay.

§ 553.202 Limitations.

The application of sections 13(b)(20) and 7(k), by their terms, is limited to public agencies, and does not apply to any private organization engaged in furnishing fire protection or law enforcment services. This is so even if the services are provided under contract with a public agency.

Exemption Requirements

§ 553.210 Fire protection activities.

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term "any employee in fire protection activities" refers to any employee (1) who is employed by an organized fire department or fire protection district and who, pursuant to the extent required by State statute or local ordinance, has been trained and has legal the authority and responsibility to engage in the prevention, control or extinguishment of a fire of any type and (2) who performs activities which are required for, and directly concerned with the prevention, control or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills and inspecting homes and schools for fire hazards. The term would include all

such employees, regardless of their status as "trainees," "probationary," or "permanent" employee, or of their particular speciality or job title (e.g., firefighter, engineer, hose or ladder operator, fire specialist, fire inspector, lieutenant, captain, inspector, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities of the type described in paragraph (c) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection activities. See § 553.15.

(b) The term "any employee in fire protection activities" also refers to employees who work for forest conservation agencies or other public agencies charged with forest fire fighting responsibilities, and who direct or engage in (1) fire spotting or lookout activities, or (2) fighting fires on the fireline or from aircraft or (3) operating tank trucks, bulldozers and tractors for the purpose of clearing fire breaks. The term includes all persons so engaged, regardless of their status as full time or part time agency employees or as temporary or casual workers employed for a particular fire or for periods of high fire danger, including those who have had no prior training. It does not include such agency employees as maintenance and office personnel who do not fight fires on a regular basis. It may include such employees during emergency situations when they are called upon to spend substantially all (i.e., 80 percent or more) of their time during the applicable work period in one or more of the activities described in paragraph (b) (1), (2) and (3) of this section. Additionally, for those persons who actually engage in those fire protection activities, the simultaneous performance of such related functions as housekeeping, equipment maintenance, tower repairs and/or the construction of fire roads, would also be within the section 7(k) or 13(b)(20) exemption.

(c) Not included in the term "employee in fire protection activities" are the so-called "civilian" employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks, stenographers, etc.

§ 553.211 Law enforcement activities.

(a) As used in sections 7(k) and 13(b)(20) of the Act, the term "any employee in law enforcement activities" refers to any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics.

(b) Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank, or of their status as "trainee," "probationary" or "permanent" employee, and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance, and lecturing, or to support activities of the type described in paragraph (g) of this section, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities. See § 553.215.

(c) Typically, employees engaged in law enforcement activities include city police; district or local police, sheriffs, under sheriffs or deputy sheriffs who are regularly employed and paid as such; court marshals or deputy marshals; constables and deputy constables who are regularly employed and paid as such; border control agents; state troopers and highway patrol officers. Other agency employees not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction, meet the three tests described above. If so, they will also qualify as law enforcement officers. Such employees might include, for example, fish and game wardens or criminal investigative agents assigned to the office of a district attorney, an attorney general, a solicitor general or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.

(d) Some of the law enforcement officers listed above, including but not limited to certain sheriffs, will not be covered by the Act if they are elected officials and if they are not subject to the civil service laws of their particular State or local jurisdiction. Section 3(e)(2)(C) of the Act excludes from its definition of "employee" elected officials and their personal staff under the conditions therein prescribed. 29 U.S.C. 203(e)(2)(C), and see § 553.11. Such individuals, therefore, need not be counted in determining whether the public agency in question has less than five employees engaged in law enforcement activities for purposes of claiming the section 13(b)(20) exemption.

(e) Employees who do not meet each of the three tests described above are not engaged in "law enforcement activities" as that term is used in sections 7(k) and 13(b)(20). Employees who normally would not meet each of these tests include (1) building inspectors (other than those defined in § 553.213(a)), (2) health inspectors, (3) animal control personnel, (4) sanitarians, (5) civilian traffic employees who direct vehicular and pedestrian traffic at specified intersections or other control points, (6) civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices, (7) wage and hour compliance officers, (8) equal employment opportunity compliance officers, (9) tax compliance officers, (9) tax compliance officers, (10) coal mining inspectors, and (11) building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.

(f) The term "any employee in law enforcement activities" also includes, by express reference, "security personnel in correctional instititions." A correctional institution is any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Typically, such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify as security personnel for purposes of the section 7(k) exemption are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged

in law enforcement activities regardless of their rank (e.g., warden, assistant warden or guard) or of their status as "trainee," "probationary," or "permanent" employee, and regardless of their assignment to duties incidential to the performance of their law enforcement activities, or to support activities of the type described in paragraph (g) of this section, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(g) Not included in the term "employee in law enforcement activities" are the so-called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. Nor does the term include employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

§ 553.212 20-percent limitation on nonexempt work.

(a) Employees engaged in fire protection or law enforcement activities as described in §§ 553.210 and 553.211, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire protection or law enforcement activities. For example, firefighters who work for forest conservation agencies may, during slack times, plant trees and perform other conservation activities unrelated to their firefighting duties. The performance of such nonexempt work will not defeat either the section 13(b)(20) or 7(k) exemptions unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection or law enforcement activities for purposes of this part.

(b) Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. (See § 553.30.) The performance of such work does not affect the application of the section 13(b)(20) or 7(k) exemptions with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent tolerance for nonexempt work discussed in (a) above.

§ 553.213 Public agency employees engaged in both fire protection and law enforcement activities.

(a) Some public agencies have employees (often called "public safety officers") who engaged in both fire protection and law enforcement activities, depending on the agency needs at the time. This dual assignment would not defeat either the section 13(b)(20) or 7(k) exemption, provided that each of the activities performed meets the appropriate tests set forth in §§ 553.210 and 553.211. This is so regardless of how the employee's time is divided between the two activites. However, all time spent in nonexempt activities by public safety officers within the work period, whether performed in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work discussed in § 553.212.

(b) As specified in § 553.230, the maximum hours standards under section 7(k) are different for employees engaged in fire protection and for employees engaged in law enforcement. For those employees who perform both fire protection and law enforcement activities, the applicable standard is the one which applies to the activity in which the employee spends the majority of work time during the work period.

§ 553.214 Trainees.

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under section 7(k) only when the employee meets all the applicable tests described in §§ 553.210 or 553.211 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities.

§ 553.215 Ambulance and rescue service employees.

(a) Ambulance and rescue service emplyees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement acitivities of the type contemplated by sections 7(k) and 13(b)(20) if their services are substantially related to firefighting or law enforcement activities in that (1) the ambulance and rescue service employees have received training in the rescue of fire and accident victims or firefighters injured in the performance of their firefighting, duties, and (2) the ambulance and rescue service employees are regularly dispatched to fires, riots, natural disasters and accidents.

(b) Ambulance and rescue service employees of public agencies subject to the Act prior to the 1974 Amendments do not come within the section 7(k) or section 13(b)(20) exemptions, since it was not the purpose of those Amendments to deny the Act's protection of previously covered and nonexempt employees. This would include employees of public agencies engaged in the operation of a hosptial; an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institutions; a school for mentally or physically handicapped or gifted children; an elementary or secondary school; an institution of higher education; a street, suburban, or interurban electric railway; or local trolley or motor bus carrier.

(c) Ambulance and rescue service employees of private organizations do not come within the section 7(k) or section 13(b)(20) exemptions even if their activities are substantially related to the fire protection and law enforcement activities perfomed by a public agency or their employer is under contract with a public agency to provide such services.

§ 553.216 Other exemptions.

Although the 1974 Amendments to the FLSA provided special exemptions for employees of public agencies engaged in fire protection and law enforcement, such workers may also be subject to other exemptions in the Act, and public agencies may claim such other applicable exemptions in lieu of sections 13(b)(20) and 7(k). For example, section 13(a)(1) provides a complete minimum wage and overtime exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR Part 541. The section 13(a)(1) exemption can be claimed for any fire protection or law enforcement employee who meets all of the tests specified in Part 541 relating to duties, responsibilities, and salary. Thus, high ranking police officials who

are engaged in law enforcement activities, may also, depending on the facts, qualify for the section 13(a) (1) exemption as "executive" employees. Similarly, certain criminal investigative agents may qualify as "administrative" employees under section 13(a)(1). However, the election to take the section 13(a)(1) exemption for an employee who qualifies for it will not result in excluding that employee from the count that must be made to determine the appplication of the 13(b)(20) exemption to the agency's other employees.

Tour of Duty and Compensable Hours of Work Rules

§ 553.220 "Tour of duty" defined.

(a) The term "tour of duty" is a unique concept applicable only to employees for whom the section 7(k) exemption is claimed. This term, as used in section 7(k), means the period of time during which an employee is considered to be duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Such periods include "shifts" assigned to employees often days in advance of the performance of the work. Scheduled periods also include time spent in work outside the "shift" which the public agency employer assigns. For example, a police officer may be assigned to crowd control during a parade or other special event outside of his or her shift.

(b) Unscheduled periods include time spent in court by police officers, time spent handling emergency situations, and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance.

(c) The tour of duty does not include time spent working for a separate and independent employer in certain types of special details as provided in § 553.227. The tour of duty does not include time spent working on a occasional or sporadic and part-time basis in a different capacity from the regular work as provided in § 553.30. The tour of duty does not include time spent substituting for other employees by mutual agreement as specified in § 553.31.

(d) The tour of duty does not include time spent in volunteer firefighting or law enforcement activities performed for a different jurisdiction, even where such activities take place under the terms of a mutual aid agreement in the jurisdiction in which the employee is employed. (See § 553.105.)

§ 553.221 Compensable hours of work.

(a) The general rules on compensable hours of work are set forth in 29 CFR Part 785 which is applicable to employees for whom the section 7(k) exemption is claimed. Special rules for sleep time (§ 553.222) apply to both law enforcement and firefighting employees for whom the section 7(k) exemption is claimed. Also, special rules for meal time apply in the case of firefighters (§ 553.223). Part 785 does not discuss the special provisions that apply to State and local government workers with respect to the treatment of substitution, special details for a separate and independent employer, early relief, and work performed on an occasional or sporadic and part-time basis, all of which are covered in this subpart.

(b) Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and competing tickets or reports, and washing and re-racking fire hoses.

(c) Time spent away from the employer's premises under conditions that are so circumscribed that they restrict the employee from effectively using the time for personal pursuits also constitutes compensable hours of work. For example, where a police station must be evacuated because of an electrical failure and the employees are expected to remain in the vicinity and return to work after the emergency has passed, the entire time spent away from the premises is compensable. The employees in this example cannot use the time for their personal pursuits.

(d) Time spent at home on-call may or may not be compensable depending on whether the restrictions placed on the employee preclude using the time for personal pursuits. Where, for example, a firefighter has returned home after the shift, with the understanding that he or she is expected to return to work in the event of an emergency in the night, such time spent at home is normally not compensable. On the other hand, where the conditions placed on the employee's activities are so restrictive that the employee cannot use the time effectively for personal pursuits, such time spent on-call is compensable.

(e) Normal home to work travel is not compensable, even where the employee is expected to report to work at a location away from the location of the employer's premises.

(f) A police officer, who has completed his or her tour of duty and who is given a patrol car to drive home and use on personal business, is not working during the travel time even where the radio must be left on so that the officer can respond to emergency calls. Of course, the time spent in responding to such calls is compensable.

(g) The fact that employees cannot return home after work does not necessarily mean that they continue on duty after their shift. For example, firefighters working on a forest fire may be transported to a camp after their shift in order to rest and eat a meal. As a practical matter, the firefighters may be precluded from going to their homes because of the distance of the fire from their residences.

§ 553.222 Sleep time.

(a) Where a public employer elects to pay overtime compensation to firefighters in accordance with section 7(a)(1) of the Act, the public agency may exclude sleep time from hours worked if all the conditions in 29 CFR 785.22 are met.

(b) Where the employer has elected to use the section 7(k) exemption, sleep time cannot be excluded from the compensable hours of work where (1) the employee is on a tour of duty of less than 24 hours, which is the general rule applicable to all employees under 29 CFR 785.21, and (2) where the employee is on a tour of duty of exactly 24 hours, which is a departure from the general rules in Part 785.

(c) Sleep time can be excluded from compensable hours of work, however, in the case of police officers or firefighters who are on a tour of duty of more than 24 hours, but only if there is an express or implied agreement between the employer and the employees to exclude such time. In the absence of such an agreement, the sleep time is compensable. In no event shall the time excluded as sleep time exceed 8 hours in a 24-hour period. If the sleep time is interrupted by a call to duty, the interruption must be counted as hours worked. If the sleep period is interrupted to such an extent that the employee cannot get a reasonable night's sleep (which, for enforcement purposes means at least 5 hours), the entire time must be counted as hours of work.

§ 553.223 Meal time.

(a) If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 7(a)(1) of the Act, the public agency may exclude meal time from hours worked if all the tests in 29 CFR 785.19 are met.

(b) If a public agency elects to use the section 7(k) exemption, the public agency may, in the case of law enforcement personnel, exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is relieved of duties and all the other tests in 29 CFR 785.19 are met.

(c) With respect to firefighters employed under section 7(k), the legislative history of the Act indicates Congressional intent to mandate a departure from the usual FLSA "hours of work" rules and adoption of an overtime standard keyed to the unique concept of "tours of duty" under which firefighters are employed. Where the public agency elects to use the section 7(k) exemption for firefighters, meal time cannot be excluded from the compensable hours of work where (1) the firefighter is on a tour of duty of less than 24 hours, and (2) where the firefighter is on a tour of duty of exactly 24 hours, which is a departure from the general rules in 29 CFR 785.22.

(d) In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in 29 CFR 785.19 and 785.22 are met.

§ 553.224 "Work period" defined.

(a) As used in section 7(k), the term "work period" refers to any established and regularly recurring period of work which, under the terms of the Act and legislative history, cannot be less than 7 consecutive days nor more than 28 consecutive days. Except for this limitation, the work period can be of any length, and it need not coincide with the pay period or with a particular day of the week or hour of the day. Once the beginning time of an employee's work period is established, however, it remains fixed regardless of how many hours are worked within that period. The beginning of the work period may, of course, be changed, provided that the change is intended to be permanent.

(b) An employer may have one work period applicable to all of the employees, or different work periods for different employees or groups of employees.

§ 553.225 Early relief.

It is a common practice among employees engaged in fire protection activities to relieve employees on the previous shift prior to the scheduled starting time. Such early relief time may occur pursuant to employee agreement, either expressed or implied. This practice will not have the effect of increasing the number of compensable hours of work for employees employed under section 7(k) where it is voluntary on the part of the employees and does not result, over a period of time, in their failure to receive proper compensation for all hours actually worked. On the other hand, if the practice is required by the employer, the time involved must be added to the employee's tour of duty and treated as compensable hours of work.

§ 553.226 Training time.

(a) Time spent in attending training required by the employer is compensable. However, police officers or firefighters who are confined to barracks while attending training academies are not on duty during those times when they are not in class or at a training session if they are free to use such time for personal pursuits.

(b) Attendance at training facilities and schools, which is not required but which may incidentally improve the employee's performance or prepare the employee for advancement, need not be counted as working time even though the public agency may pay all or part of the costs such as training.

(c) Attendance as specialized or follow-up training which is required by law for certification of public and private employees within a particular governmental jurisdiction (for example, certification of public and private emergency rescue workers) does not constitute compensable hours of work for employees of cities, counties, or other local governments within the State. This is the case only when the training occurs outside of normal working hours.

§ 553.227 Outside employment.

(a) Section 7(p)(1) makes special provision for fire protection and law enforcement employees of public agencies who, at their own option, perform special duty work in fire protection, law enforcement or related activities for a separate and independent employer (public or private) during their off-duty hours. The hours of work for the separate and independent employer are not combined with the hours of the primary public agency employer for purposes of overtime compensation.

(b) Section 7(p)(1) applies to such outside employment provided (1) the special detail work is performed solely at the employee's option, and (2) the two employers are in fact separate and independent.

(c) Whether two employees are, in fact, separate and independent can only be determined on a case-by-case basis.

(d) The primary employer may facilitate the employment or affect the conditions of employment of such employees. For example, a police department may maintain a roster of officers who wish to perform such work. The department may also select the officers for special details from a list of those wishing to participate, negotiate their pay, and retain a fee for administrative expenses. The department may require that the separate and independent employer pay the fee for such services directly to the department, and establish procedures for the officers to receive their pay for the special details through the agency's payroll system. Finally, the department may require that the officers observe their normal standards of conduct during such details and take disciplinary action against those who fail to do so.

(e) Section 7(p)(1) applies to special details even where a State law or local ordinance requires that such work be performed and that only law enforcement or fire protection employees of a public agency in the same jurisdiction perform the work. For example, a city ordinance may require the presence of city police officers at a convention center during concerts or sports events. If the officers perform such work at their own option, the hours of work need not be combined with the hours of work for their primary employer in computing overtime compensation.

(f) The principles in paragraphs (d) and (e) of this section with respect to special details of public agency fire protection and law enforcement employees under section 7(p)(1) are exceptions to the usual rules on joint employment set forth in 29 CFR Part 791.

(g) Where an employee is directed by the public agency to perform work for a second employer, section 7(p)(1) does not apply. Thus, assignments of police officers outside of their normal work hours to crowd control at a parade, where the assignments are not solely at the option of the officers, would not qualify as special details subject to this exception. This would be true even if the parade organizers reimburse the public agency for providing such services.

(h) Section 7(p)(1) does not prevent a public agency from prohibiting or

restricting outside employment by its employees.

Overtime Compensation Rules

§ 553.230 Maximum hours standard for work periods of 7 to 28 days—Section 7(k).

(a) For those employees engaged in fire protection activities who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceed the number of hours which bears the same relationship to 212 as the number of days in the work period bears to 28.

(b) For those employees engaged in law enforcement activities (including security personnel in correctional institutions) who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceed the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly, overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

Work period (days)	Maximum hours standards	
	Fire protection	Law enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

§ 553.231 Compensatory time off.

(a) Law enforcement and fire protection employees who are subject to the section 7(k) exemption may receive compensatory time off in lieu of overtime pay for hours worked in excess of the maximum for their work period as set forth in § 553.230. The rules for compensatory time off are set forth in §§ 553.20 through 553.28.

(b) Section 7(k) permits public agencies to balance the hours of work over an entire work period for law enforcement and fire protection employees. For example, if a firefighter's work period is 28 consecutive days, and he or she works 80 hours in each of the first two weeks, but only 52 hours in the third week, and does not work in the fourth week, no overtime compensation (in cash wages or compensatory time) would be required since the total hours worked do not exceed 212 for the work period. If the same firefighter had a work period of only 14 days, overtime compensation or compensatory time off would be due for 54 hours (160 minus 106 hours) in the first 14 day work period.

§ 553.232 Overtime pay requirements.

(a) If a public agency pays employees subject to section 7(k) for overtime hours worked in cash wages rather than compensatory time off, such wages must be paid at one and one-half times the employees' regular rates of pay. In addition, employees who have accrued the maximum 480 hours of compensatory time must be paid cash wages of time and one-half their regular rates of pay for overtime hours in excess of the maximum for the work period set forth in § § 553.230.

§ 553.233 "Regular rate" defined.

The rules for computing an employee's "regular rate", for purposes of the Act's overtime pay requirements, are set forth in 29 CFR Part 778. These rules are applicable to employees for whom the section 7(k) exemption is claimed when overtime compensation is provided in cash wages. However, wherever the word "workweek" is used in Part 778, the words "work period" should be substituted.

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federal register

Friday
April 18, 1986

Part V

Environmental Protection Agency

40 CFR Part 60

Review of Standards of Performance for New Stationary Sources; Sewage Treatment Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2796-2]

Review of Standards of Performance for New Stationary Sources; Sewage Treatment Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of Standards and Proposed Revisions.

SUMMARY: The EPA is required to review standards of performance for new, modified, or reconstructed stationary sources every 4 years by the Clean Air Act. A review of the existing new source performance standards (NSPS) for sewage treatment plants (40 CFR Part 60, Subpart O) has been completed to determine if changes are needed. The Agency proposes to leave unchanged the emission limits established in 1974 for control of particulate emissions and opacity from the incineration of sewage sludge. However, this notice proposes to require additional measurements during performance tests and to require owners and operators of all existing and future sewage sludge incinerators subject to the NSPS, to monitor, record and report, under specified circumstances, the operating pressure drop of the scrubber control system and several operating parameters of the incinerator. These operating parameters include the oxygen level at the exit of the incinerator, the temperature profile, the quantity of auxiliary fuel used in the incinerator and the total solids content and volatile solids content of the sludge to be incinerated. Alternatively, plants may elect to monitor, record and report the incinerator exhaust gas volumetric flow rate. The EPA is further soliciting data and information on emissions of toxic organics from sludge incinerators.

DATES: Comments must be received on or before June 17, 1986

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 16, 1986, a public hearing will be held on June 2, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by May 16, 1986.

ADDRESSES: Send comments (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–84–03, U.S. Environmental Protection Agnecy, 401 M Street, SW., Washington, DC 20460.

Public Hearing: If any person contacts the EPA requesting to speak at a public hearing, it will be held at the Environmental Research Auditorium, corner of Highway 54 and Alexander Drive, Research Triangle Park, North Carolina. Persons wishing to present oral testimony shall notify Ms. Shelby Journigan, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Review Document. The review document summarizing information gathered during the review may be obtained from the EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Second Review of Standards of Performance for Sewage Sludge Incinerators, EPA–450/3–84–010," March 1984.

Docket. Docket No. A–84–03, containing supporting information gathered during the review is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5601.

SUPPLEMENTARY INFORMATION:

Background

Approximately 15 percent of the sludge generated annually at sewage treatment plants is disposed of by incineration. Sewage treatment plants were originally selected for NSPS development in 1973 on the basis of the potential of sewage sludge incinerators to emit significant quantities of particulate matter into the atmosphere. Concern was also expressed over the potential of sewage sludge incinerators to emit mercury and other toxic materials. A particulate emission standard of 0.031 grains per dry standard cubic foot (dscf) was proposed in 1973 for new sewage sludge incinerators (38 FR 15411). The standard was proposed on June 11, 1973 and promulgated on February 28, 1974 (39 FR 9312). The promulgated standard for particulate emissions was expressed on a mass basis, and set at 0.65 kg/Mg of dry sludge input (1.3 lb/ton). An opacity standard of 20 percent was also promulgated. No provision was made in the promulgated standard for continuously monitoring either stack opacity of operating parameters of the incinerator or the emissions control device.

The standard was amended on November 10, 1977 (42 FR 58520) to define an affected facility as any incinerator that burns wastes containing more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants, or charges more than 1,000 kg/day (2,205 lb/day) of municipal sewage sludge.

Municipal sludge may also be incinerated in combination with municipal refuse. Simultaneous incineration of both sludge and refuse in either a conventional refuse incinerator or a sewage sludge incinerator is referred to as coincineration. A procedure was developed by the EPA in 1976 to determine whether facilities coincinerating are subject to Subpart E (municipal incinerators) or Subpart O (sewage treatment plants) of the NSPS. In some cases, this procedure allows a proration of the emission limits of the two Subparts.

Section 111(b)(1)(B) of the Clean Air Act requires the Administrator of the EPA to review and, if necessary, to revise established standards of performance for new stationary sources at least every 4 years. A review of the standard for sewage treatment plants was previously conducted in 1978. As published in the **Federal Register** (44 FR 67934), the previous review of the standard showed that, except for one facility located in Merrimack, New Hampshire, all sewage sludge incinerators subject to the standard had achieved the particulate emission limit of 0.65 kg/Mg (1.3 lb/ton) dry sludge input. No revisions to the existing standard were proposed as a result of the 1978 review.

This notice reports the findings of the second 4-year review of the NSPS for sewage treatment plants. This review focused on the compliance status of the incinerators built after 1978, as well as on the Merrimack, New Hampshire facility. Information was gathered by contacting the Regional Offices of the EPA, State agencies, vendors of incinerator and air pollution control equipment, and affected facilities. Information was assembled on the following: (1) The number and location of plants affected by the standard since 1978, (2) the emissions characteristics of these plants, (3) the costs of pollution control equipment typically used on

sewage sludge incinerators, and (4) plants which coincinerate sewage sludge with municipal refuse. A background document was prepared which reports the current status of control technology, compliance test data, factors affecting particulate emission rates, emissions of potentially toxic trace elements, the cost effectiveness of representative control systems on various sizes of sewage sludge incinerators, and coincineration of sewage sludge and municipal refuse. This review was coordinated with the EPA Sludge Task Force which completed its work in 1984.

The findings and the proposed revisions of the current review of the NSPS for sewage treatment plants are presented in the following sections of this notice. The first section discusses the technical findings of the review, and assesses the need to revise the existing standard. The second section discusses the proposed requirements for monitoring, recordkeeping, and reporting of the pressure drop of the scrubber and incinerator operating parameters including (1) oxygen level at the exit of the incinerator, (2) the incinerator temperature profile, (3) the quantity of auxiliary fuel used in the incinerator, and (4) the total solids content and the volatile solids content of the sludge. The alternative requirement for monitoring, recordkeeping and reporting of the scrubber pressure drop and incinerator exhaust gas volumetric flow rate is also discussed. Finally, this section discusses the expansion of the required measurements during the performance test. Those measurements include the heavy metal concentrations in the sludge and the effluent gases.

Many Federal laws require environmentally sound management of municipal sludge, and several of these laws stress the need for sludge utilization and reuse. These include the Clean Air Act; Clean Water Act; Resource Conservation and Recovery Act; Marine Protection, Research and Sanctuaries Act; Toxic Substances Control Act; and the National Environmental Policy Act. Because there is no single legislative approach, a framework for integrating the various Federal laws and regulations is needed to ensure that sludges are used or disposed of in a consistent, environmentally acceptable, and economically feasible manner.

The Agency has announced its intention to consolidate, where practicable, its various existing waste management authorities with the broad authorities provided under Section 405 of the Clean Water Act to establish minimum requirements for the control of sewage sludge. This proposal represents the first regulatory action which is the result of this effort. It relies on the authority of the Clean Air Act, and does not require the use of the authority of Section 405 of the Clean Water Act for its implementation.

Section 405(d) of the Clean Water Act requires EPA to develop regulations for the use and disposal of sewage sludge. Although the manner of use and disposal is a local determination, it is unlawful to operate a sludge use or disposal system that is not in compliance with guidelines developed under Section 405(d). Following the recommendation of the EPA Sludge Task Force, the Agency has initiated a major effort for the promulgation of regulations which will establish guidelines for State and local sludge management programs and technical guidelines for the disposal and utilization of sewage sludge, including concentrations of pollutants which may interfere with the use or disposal. Work has begun to review, revise or develop regulations for the following disposal and use methods: distribution and marketing, land application, landfill, ocean dumping and incineration. The review of incineration may include incinerators for which construction was commenced before June 11, 1973, that is, incinerators to which the NSPS does not apply. Comments on this proposal may be used in planning and development of this regulatory effort.

Findings

Projected New Facilities

About 150 sewage treatment plants currently incinerate all, or part, of the sludge generated in the process of treating municipal wastewaters. Of these plants, 120 (78 percent) employe multiple-hearth incinerators and 24 (16 percent) employe fluidized-bed incinerators. The remaining plants use electric or rotary kiln incinerators. About 50 individual incinerators at these plants are subject to the NSPS. Since the previous review of Subpart O was completed in 1978, 23 new sewage sludge incineration plants affected by the NSPS have been built. At these 23 plants, 17 multiple-hearth incinerators, 4 fludized-bed incinerators, and 4 electric incinerators have been installed (2 plants are equipped with 2 incinerators). Seven sludge incineration plants were identified as being currently under construction.

It is estimated that 18 additional sewage sludge incineration plants will begin operating over the next 5 years. These plants will have the capacity to incinerate approximately 223,000 Mg (245,000 tons) of dry sludge per year and would be subject to Subpart O.

Control Technology

Wet scrubbers have traditionally been employed to control emissions from sewage sludge incinerators. The type of scrubber most widely used on incinerators installed after 1978 is the combination venturi/impingement-tray scrubber. Sixteen of the 17 new multiple-hearth incinerators are equipped with venturi/impingement-tray scrubbers. These scrubbers operate at pressure drops of 10 to 45 inches of water gauge. One multiple-hearth incinerator is equipped with an individual impingement-tray scrubber with a pressure drop of 10 inches of water gauge. Venturi/impingement-tray scrubbers are also used on three of the four new fluidzed-bed incinerators and operate at pressure drops of 30 to 42 inches of water gauge. The remaining fluidized-bed incinerator uses a venturi scrubber. Only one of the four new electric incinerators uses a combination venturi/impingement tray scrubber. This scrubber is operated at a pressure drop of 10 inches of water gauge. The remaining three electric incinerators are controlled with individual venturi scrubbers operating at pressure drops between 8 and 10 inches of water gauge.

Most incinerators that have achieved compliance with the standard are equipped with scrubbers operating at pressure drops of about 30 inches of water gauge, which is higher than the pressure drop of about 20 inches of water gauge considered to be the basis of the existing standard at the time of promulgation. Also, some incinerators affected by the NSPS after 1978 operate scrubbers at pressure drops in the range of 30 to 45 inches of water gauge. However, most of the incinerators equipped with relatively highpressure drop scrubbers have achieved emission rates well below the NSPS limit, and it is reasonable to assume that they could be operated at somewhat lower pressure drops without exceeding the NSPS emission limit.

Since 1978, data on over 60 incinerators have been collected and analyzed to find a correlation between incinerator particulate emission rates and scrubber pressure drops, but no correlation could be quantified. Therefore, no basis exists for quantitatively predicting the increases in particulate emissions that would result from operating high pressure drop scrubbers at lower pressure drops and thereby quantifying the minimum pressure drop necessary to achieve the

NSPS emission limit at those incinerators that have achieved emission rates well below the NSPS.

Because many incinerators built since 1978 are equipped with scrubbers operating at pressure drops higher than that originally considered to be the basis of the NSPS, the costs of control at a pressure drop of 40 inches of water gauge were examined. These costs were found to increase total annualized control costs by about 5 percent compared to scrubbers operating at pressure drops of 20 inches of water gauge.

The review did not identify any newly demonstrated technologies that control particulate emissions more effectively than those currently in use. There has been a trend over the past 10 years towards the more prevalent use of combination venturi/impingement-tray scrubbers instead of individual venturi or impingement-tray scrubbers, however. The pressure drops at which these scrubbers are commonly operated have also tended to increase since 1978.

Achievability of the Standard

The data obtained during this review demonstrate that new sewage sludge incinerators, when correctly operated and equipped with an appropriate emissions control device, can achieve the existing particulate emission limit. Of the 17 multiple-hearth incinerators that have begun operating in the past 5 years, 12 have demonstrated compliance with the NSPS during a performance test. Four other multiple-hearth incinerators have not yet ben tested. The remaining multiple-hearth incinerator, located in Providence, Rhode Island, achieved emission rates below the NSPS limit during an unofficial test, but has failed to demonstrate compliance with the standard during two performance tests.

The Providence incinerator is equipped with a combination venturi/impingement-tray scrubber operating at a pressure drop of 30 inches of water gauge. During the most recent performance test of the Providence incinerator in August 1982, a series of process upsets occurred which cannot be considered to be representative of typical operating conditions. The Providence incinerator is not currently operating because of renovations being made to the overall sewage treatment plant and because of a number of ongoing litigations involving EPA as well as the current and former owners of the facility.

All of the four fluidized-bed incinerators installed since 1978 have demonstrated compliance with the standard. Three of the four sewage treatment plants with new electric incinerators have failed to meet the NSPS limit. Failure of these incinerators to demonstrate compliance was apparently due to the low pressure drops of the scrubber systems, which operate at 10 inches water gauge or less, as compared to the basis of 20 inches water gauge for the existing NSPS. In addition, one plant reportedly used scrubber water with unusually high suspended particulate levels. It is believed that the relatively low uncontrolled emission rates of electric incinerators have led design engineers to specify unreasonably low pressure drop scrubbers for these incinerators. None of these electric incineration facilities are operating at present.

Neither of the two sludge incinerators located in Merrimack, New Hampshire, achieved compliance with the NSPS during their initial performance tests in 1977. Both of these incinerators eventually achieved compliance with the NSPS by 1979. Compliance was achieved by modifying the emissions control devices used on these incinerators. The major impact of these modifications was to increase the scrubber pressure drop from 25 inches of water gauge to 42 inches of water gauge. The sludge burned at the Merrimack plant was unusual in that 85 percent of the wastewater entering the plant is discharged from a single industrial facility, a brewery. Brewer's waste is relatively difficult to dewater and the sludge had a typical total solids content of about 15 percent. Although a new sludge dewatering system has increased the total solids content to about 22 percent, the Merrimack incinerators have not been operated since this dewatering system was installed. The sludge generated at the Merrimack plant is now composted because it was found to be a more economical disposal option for this plant.

The average controlled emission rate for the 17 multiple-hearth incinerators installed since 1978 is 0.38 kg/Mg (0.76 lb/ton) of dry sludge input. If the Providence incinerator is excluded, the average emission rate of multiple-hearth incinerators in compliance with the standard is 0.34 kg/Mg (0.67 lb/ton) of dry sludge input, which is approximately one-half of that allowed by the existing standard. Controlled emission rates ranged from 0.15 kg/Mg (0.29 lb/ton) to 0.55 kg/Mg (1.10 lb/ton) for multiple-hearth incinerators that demonstrated compliance with the NSPS.

The average controlled emission rate for the four fluidized-bed incinerators installed since 1978 is 0.37 kg/Mg (0.74 lb/ton) of dry sludge input. For these incinerators, controlled particulate emission rates ranged from 0.14 kg/Mg (0.28 lb/ton) to 0.50 kg/Mg (0.99 lb/ton) of dry sludge input.

The average controlled rate of particulate emissions for the four electric incinerators installed since 1978 is 1.11 kg/Mg (2.22 lb/ton) of dry sludge input. Emissions rates varied between 0.61 kg/Mg (1.23 lb/ton) and 1.91 kg/Mg (3.83 lb/ton) for the three electric incinerators tested. However, two of these incinerators do not employ emission control devices considered to represent best demonstrated technology.

Although many of the incinerators installed over the past 5 years have achieved particulate emission rates well below those prescribed by the existing NSPS, some incinerators have achieved emission rates only slightly below the NSPS limit. No information was found during this review to indicate that these incinerators were not well operated and maintained. In this review of the standard, five new incinerators were identified which achieved compliance at emission rates of between 0.50 and 0.55 kg/Mg (1.00 and 1.10 lb/ton) of dry sludge input. Results from the previous review in 1978 indicated that four incinerators achieved compliance at emission rates of between 0.50 and 0.63 kg/Mg (1.00 and 1.25 lb/ton). No unusual operating conditions were identified at these incineration plants.

The existing NSPS limit of 20 percent opacity for stack emissions was also evaluated. However, records of opacity readings were available for only four of the incinerators built after 1978. The opacity observed during performance tests for two of these incinerators never exceeded 5 percent. Opacity for a third incinerator varied between 10 and 15 percent. Opacity readings taken during the August 1982 performance test on the incinerator located in Providence, Rhode Island, ranged from 0 to 45 percent. However, this incinerator did not meet the NSPS particulate emission limit during this test.

Consideration was given to tightening the existing emission limit for particulate mater. A revised emission limit would be expected to reduce emissions of some potentially toxic trace elements in addition to reducing emissions of total particulates. The limited data available on emissions of trace elements from sewage sludge incinerators were reviewed, and it was found that these elements, particularly the metals cadmium, chromium, nickel, lead, and arsenic, are generally controlled at somewhat lower effeciencies than are total particulates. However, a more stringent emission limit is not being proposed in part

because some well operated incinerators achieved emission rates only slightly below the standard. A correlation between total particulate emissions and scrubber pressure drop would be needed to support a more stringent NSPS limit for total particulate emissions. However, no correlations between emissions of either trace elements or total particulates and scrubber pressure drop could be quantified from existing data. Consequently, there is no firm technical basis for predicting how incinerators with total particulate emissions as high as those which have been demonstrated in some instances could achieve specific lower emission rates. For this reason, EPA concludes that retaining the current emission limit based on best demonstrated technology is appropriate until a more highly quantified basis for characterizing the performance of the controls can be established.

Factors Affecting Emissions

Particulate emission rates are affected by the design of the incinerator, the type and design of the control device used, the characteristics of the sludge being burned, as well as the method of operation of the incinerator and control device. The major variable affecting particulate emissions from sewage sludge incinerators is the operating pressure drop of the wet scrubber. The particulate removal efficiency of a given wet scrubber increases as the pressure drop of the scrubber increases. The EPA has attempted to quantify correlations between emission rates and scrubber pressure drop that would apply to all incinerators. In the previous review of the standard in 1978, no correlation between specific pressure drops and specific emission rates was found. The EPA initiated a subsequent study to determine if such a correlation would become apparent if a large data base were used. For this follow-up study, detailed data were collected on 60 sludge incinerators. However, no quantitative correlation between particulate emission rates and scrubber pressure drops was identified in this study. Although no quantitative correlation has been generally established between particulate emissions and scrubber pressure drops over ranges of these paramenters, emissions will increase as the pressure drop is decreased for a given incinerator and a given scrubber. Therefore, at any given plant, proper operation and maintenance of emission control devices is key in minimizing particulate emissions from the incineration of sewage sludge.

The manner in which an incinerator is operated can also affect particulate emissions. As discussed above, no direct correlations between specific incinerator operating parameters and emission rates have been generally quantified. The EPA has found, however, that particulate emission rates from a given incinerator can increase when the air flow rate through the incinerator is increased substantially. At elevated air flow rates there is greater opportunity for particulate matter to be entrained by the exhaust gases and discharged from the incinerator. Scrubber efficiency can also decrease when the flow of air and combustion gases into the scrubber is increased beyond the design flow rate. Insufficient data are available to indicate whether controlled emissions increase primarily as a result of the increase in uncontrolled emissions, the changes in particle size distributions of the particulate emissions entering the control device or the overall reductions in scrubber efficiency that may occur when air flow rates are increased substantially.

The rate at which air is added to a multiple-hearth incinerator is determined primarily by three factors. First, air must be provided in sufficient quantities to meet the theoretical stoichiometric requirements for combustion of both auxiliary fuel and volatile material in the sludge. Combustion air requirements, therefore, vary according to auxiliary fuel use and sludge loading rate. Second, owing to the design of multiple-hearth incinerators, 25 to 75 percent more than the theoretical stoichiometric air requirement must be added to achieve complete combustion. Third, additional air is routinely added to control temperatures of the various hearths. Multiple-hearth incinerators are typically designed to operate at maximum excess air levels of about 75 percent.

The total air flow rate is, then, a function of the stoichiometric air requirement and the amount of excess air added to ensure complete combustion and for cooling. Air flow rates will normally fluctuate in response to sludge loading rates and changes in sludge moisture or volatiles content, but the amount of air in excess of the stoichiometric combustion requirement can be held relatively constant when an incinerator is being correctly operated. For example, the temperature profile in a multiple-hearth incinerator can be controlled by manipulating the firing rates of the fuel burners on the various hearths, by adjusting the speed of the rabble arms, or by altering the sludge feed rate. Similarly, operating variables other than air flow can be controlled to ensure that the sludge burns completely. Beyond a certain point, addition of air in excess of that required to burn the sludge is unnecessary and cannot be justified on operational grounds. Furthermore, unnecessarily high excess air rates result in significant energy losses from the incinerator. The increase in auxiliary fuel consumption required to compensate for these losses results in unnecessarily high combustion air requirements and corresponding high air flow rates.

The EPA has found that particulate emissions decrease when the specific fuel consumption (the amount of fuel used per ton of sludge burned) of an incinerator is decreased. Also, in some instances, the periodic addition of excessive amounts of air for incinerator cooling has caused emissions of particulates to increase. Therefore, while the EPA recognizes that the amount of excess air required to achieve proper operation is specific to individual incinerators, operating excess air levels above those generally specified by the manufacturer are indicative of poor operation and may reasonably be expected to cause particulate emissions to increase.

The moisture content of the sludge feed has also been implicated as a factor affecting particulate emissions from incinerators. As the moisture content of the sludge increases, more fuel and air are required to dry and burn the sludge. Therefore, the exhaust gas flow rate at the inlet of the scrubber will be somewhat higher for incinerators burning relatively wet sludges compared to incinerators burning sludges with relatively low moisture content, when all other factors are equivalent. The moisture content of the sludge can have another indirect effect on particulate emissions by making it more difficult to obtain an even drying profile within a multiple-hearth incinerator. Relatively wet sludges can lead to excessive turbulence in the upper hearths which could lead to increased entrainment of particulates in the exhaust gases.

Data for one plant presented in the 1978 NSPS review document showed a correlation between sludge moisture content and particulate emission rates. As the moisture content of the sludge feed increased, particulate emissions increased. In the previously cited follow-up study incorporating data from 60 incinerators, a much more variable relationship was found between sludge moisture content and particulate emissions. Data obtained on the

incinerators installed after 1978 did not indicate any correlation between emissions and sludge moisture content. The percent volatiles in the sludge solids can vary widely and obscure the actual relationship between moisture content and particulate emissions. The chemical characteristics of the sludge are an important parameter in designing an incinerator and associated emissions control equipment. Thus, a substantial increase in the moisture content of the sludge feed beyond the design value could lead to exhaust gas flow rates which exceed the design capacity of the incinerator and emissions control system. As discussed above, excessive flow rates may cause particulate emissions to increase.

Cost Effectiveness of the NSPS

The cost effectiveness of achieving the NSPS was estimated for the most prevalent control system now in use, combination venturi/impingement-tray scrubbers, on sewage sludge incinerators with capacities of 0.23, 0.45, 0.90, 1.80, and 3.60 Mg/hour (0.25, 0.50, 1.00, 2.00, and 4.00 tons/hour) of dry sludge input. The size of multiple-hearth and fluidized-bed incinerators installed since the NSPS was proposed in 1973 ranges from 0.27 Mg/hour to 3.60 Mg/hour (0.3 to 3.8 tons/hour) and averages 1.4 Mg/hour (1.5 tons/hour) of dry sludge input. Cost effectiveness was not calculated for both multiple-hearth and fluidized-bed incinerators. Cost effectiveness was calculated for electric incinerators because sufficient design and emissions data are not available, and because cost effectiveness for electric incinerators is not expected to be substantially different than that for fluidized-bed or multiple-hearth incinerators. A range of scrubber pressure drops was also considered. The lowest scrubber pressure drop for which cost effectiveness was calculated was 20 inches of water gauge and the highest 40 inches of water gauge.

For medium size multiple-hearth sludge incinerators, the cost effectiveness was calculated to be $595 per megagram ($540/ton) of particulate removed for the type of emission control devices typically installed on incinerators built since 1978. Cost effectiveness increased to $1,815 per megagram ($1,650/ton) of particulate removed for the smallest size multiple-hearth incinerator considered. For the typically smaller fluidized-bed incinerators, a cost effectiveness of $1,070 per megagram ($970/ton) of particulate removed was calculated. The cost effectiveness for control systems operating at the original basis of the NSPS (20 inches water gauge) is from 1 to 5 percent less, depending on incinerator size, than for scrubbers operated at about 30 inches water gauge which have been installed on most incinerators that have achieved compliance with the standard.

The range of cost effectiveness cited above is considered to be reasonable in light of the potential of these incinerators to emit trace elements and potentially toxic compounds. Cadmium, lead, chromium, arsenic, nickel, and other metals have been identified in the emissions from sewage sludge incinerators. In meeting the NSPS emission limit for total particulates, emissions of trace metals are also reduced substantially.

Coincineration

A procedure was developed by the EPA in 1976 for determining which of the subparts of the NSPS (Subpart E for municipal incinerators and Subpart O for sewage sludge incinerators) is to be applied when these wastes are coincinerated. The procedure allows a proration of the standards for facilities that incinerate more than 45 Mg (50 tons) per day of total wastes, when more than 50 percent of this total consists of sewage sludge. If less than or equal to 50 percent of the total waste is sewage sludge, then Subpart E is applied.

About 23 plants in the U.S. have coincinerated sewage sludge with municipal refuse. Due mainly to operational problems, most have either discontinued coincineration or shut down completely. Presently only three plants are coincinerating, these plants are located in Stamford, Connecticut, Glen Cove, New York, and Harrisburg, Pennsylvania.

Monitoring and Recordkeeping

There is no requirement under the existing Subpart O for continuously monitoring either stack opacity or operating parameters of the incinerator and emissions control device. To determine whether any State air pollution control agencies require continuous monitoring of sewage sludge incinerators, regulations were surveyed in the 11 States in which 70 percent of operating incinerators are located. It was found that only two States have existing monitoring, recordkeeping and reporting requirements that could be applied to sewage sludge incinerators.

One State requires that an operator of a sewage sludge incinerator develop a procedure (designated as a Standard Operating Procedure) which specifies how the incinerator will be operated to minimize emissions. Operators of affected facilities are required to show conformity with these procedures in an annual report to the State agency. The Standard Operating Procedure is general and does not follow any specific format. Normally, only information on maintenance and shut down procedures, and operator training programs are required. While the second State has the authority to require continuous monitoring of stack opacity at sewage sludge incineration plants, this authority has not been recently exercised for sludge incinerators. Officials of this State have found that opacity monitors do not operate properly when placed in the stack of a sludge incinerator. Therefore, the results of the survey indicated that the States have generally not developed specific monitoring requirements for incinerator and control device operating parameters of sewage sludge incinerators.

Most affected sewage sludge incineration facilities under the NSPS are currently considered to be in compliance with the standard. However, some plants have failed to achieve compliance and others have achieved the standard only by a narrow margin. Emissions from sewage sludge incinerators have been shown to be variable and sensitive to fluctuations in operating conditions. Therefore, it is reasonable to believe that exceedances of the emission limit occur. Personnel in State agencies and the EPA regional offices contacted during this review stated that a requirement for monitoring, recordkeeping, and reporting of incinerator operating parameters would aid in enforcement. As a result, the EPA investigated a number of alternative monitoring requirements for sewage sludge incinerators which would ensure that an incinerator and the associated emissions control devices are properly operated and maintained on a continuing basis.

Consideration was given to requiring continuous monitoring of stack gas opacity. Opacity monitoring was found, however, to be technically infeasible due to the low temperature and high moisture content of the flue gases. At a typical flue gas temperature of 50 °C (122 °F), there is condensed moisture in the flue gas. The condensed water vapor would be measured by opacity monitors and, therefore, inaccurate results would be obtained. All persons contacted during this review agreed that opacity monitors on sewage sludge incinerators do not function properly when placed after a wet scrubber control system.

Because scrubber pressure drop has such a direct impact on particulate emissions from sewage sludge incinerators, the EPA proposes to require owners and operators of sewage

sludge incinerators subject to the NSPS to continuously monitor and record the operating pressure drop of the scrubber. This requirement is considered desirable to ensure that the scrubber continues to be operated and maintained in a manner consistent with the method of operation at the time of a performance test which initially established compliance.

In addition to monitoring and recording the scrubber pressure drop, EPA is also proposing to require monitoring and recording of certain incinerator operating parameters that can affect particular emissions. In particular, substantial increases in incinerator exhaust gas flow rate for a given incinerator can result in increased particulate emissions, although there are insufficient data to correlate quantitatively particulate emissions to incinerator exhaust gas flow rates for all incinerators. Increased incinerator exhaust gas flow rates can result from unnecessary high amounts of incinerator excess air or unnecessarily high fuel consumption. Continuous monitoring of incinerator excess air levels and specific fuel consumption is one method of detecting conditions that likely would result in increased incinerator exhaust gas flow rates. It is also necessary to account for any periods when the incinerator is operated at excessively high temperatures, thus significantly increasing the incinerator cooling air requirements. Alternatively, the incinerator exhaust gas volumetric flow rate can be monitored directly. The EPA believes that limiting the amount of air in excess of that required for combustion and temperature control would not impose any unreasonable restrictions on operating practices. Therefore, the EPA has concluded that information on incinerator exhaust gas flow rates should be continuously monitored and recorded at sewage sludge incineration facilities. The EPA is proposing to allow owners and operators of sewage sludge incinerators to measure and record information on incinerator exhaust gas flow increases either by monitoring incinerator excess air levels and specific fuel consumption or by monitoring directly the incinerator exhaust gas volumetric flow rate.

The monitoring of incinerator excess air levels can be accomplished by measuring the oxygen content of the incinerator gases upstream of the emissions control device. Oxygen content can be directly correlated to excess air levels. In multiple-hearth incinerators, a portion of the rabble shaft cooling air is typically combined with the gases exiting the emissions control device and is exhausted through the stack. For this reason, oxygen levels must be measured upstream of the addition of rabble shaft cooling air in multiple-hearth incinerators.

Fuel use rates for a given incinerator necessarily vary depending on the characteristics of the sludge being incinerated, particularly the sludge moisture and volatile solids content. Therefore, to detect changes in fuel use rate which may lead to excessive increases in incinerator exhaust gas flow rates, it is necessary to account for variations in the composition of the sludge being incinerated. In conjuction with monitoring and recording the fuel use rate, EPA is proposing that daily measurements be made of the moisture and volatile solids content of the sludge being incinerated. Based on these measurements, changes in specific fuel consumption (i.e., lb fuel per dry ton of sludge) can be monitored.

During the review of the standard, it was found that sludge moisture, sludge volatile solids content, as well as incinerator fuel usage and temperature are routinely monitored at some sludge incinerators, although the frequency of such measurements varies from plant to plant. Also, the existing provisions under § 60.153 require that access be provided for purposes of obtaining a representative grab sample of the sludge fed to the incinerator. Therefore, EPA's proposal to require that all sewage sludge incinerators subject to the NSPS continuously monitor and record fuel use, continuously monitor and record the temperature profile of the incinerator, and monitor and record the total solids and volatile solids content of the sludge on a daily basis is reasonable.

The EPA recognizes that owners or operators of some sewage sludge incinerators may prefer to measure and record information on increases in incinerator exhaust gas flow rates by monitoring the incinerator exhaust gas volumetric flow rate directly in lieu of monitoring excess air levels and specific fuel use. Plants electing this option must ensure that the monitoring device is properly located and calibrated to determine the average flow rate of the exhaust gas for the specific incinerator. Accordingly, plant owners or operators will be required to submit a description of the device, including the type of device, the location of the device, and the method and schedule for calibration of the device for approval.

Sewage sludge incinerators are potentially significant sources of atmospheric metal emissions. The limited data available indicate that wet scrubbers operating within the range of pressure drops typical for sewage sludge incinerators may control metal emissions at rates between 63 and 92 percent. Given the relatively low removal efficiencies of wet scrubbers on metal emissions as compared with total particulate emissions from sludge incinerators, the Agency proposes to require that additional information be developed on the metals content of sludge disposed of through incineration. This information will assist the Agency in determining whether or not metals are emitted from the source category in quantities sufficient to warrant future regulatory action. Therefore, it is proposed to require owners and operators of sewage sludge incinerators affected under the NSPS to measure and record the metals content of the sludge that is incinerated and the particulates that are emitted during performance tests. Metals required to be measured are:

—Arsenic
—Beryllium
—Cadmium
—Chromium
—Copper
—Lead
—Nickel
—Selenium
—Zinc

Toxic Organic Emissions

The EPA has reviewed available information on the emissions of toxic organic compounds from sewage sludge incinerators. It has found that little data are available. The EPA has, however, identified the following list of organic chemicals which it is assessing for potential concern in emissions from sewage sludge incinerators.

—Benzene
—Carbon Tetrachloride
—Chloroform
—Methylene Chloride
—Tetrachloroethylene
—Vinyl Chloride
—Benzo(a)anthracene
—Benzo(a)pyrene
—Phenanthrene
—Bis (2-ethylhexyl) phthalate
—Aldrin/Dieldrin
—Chlordane
—DDT/DDE/DDD
—Heptachlor
—Lindane
—PCBs
—Toxaphene
—TCDD
—TCDF

The EPA requests available data that may exist on the emission of these compounds from sewage sludge incinerators. The EPA has conducted a single test of volatile organic emissions and is now analyzing the results of this test. Additional testing may be undertaken at a later date.

Proposed Revisions

This proposal would apply to all sewage sludge incinerators which are subject to the NSPS. These include incinerators which will begin operating in the future, and those which commenced construction, reconstruction, or modification after June 11, 1973. This proposal would require owners or operators of these

incinerators to continuously monitor and record the pressure drop across the emission control device. In addition, the proposal would require owners or operators to continuously monitor and record the oxygen content of the incinerator exhaust gas upstream of the control device, the temperature profile of the incinerator, and the fuel flow to the incinerator, and to measure and record daily the moisture and volatile solids content of the sludge being incinerated. Alternatively, the proposal would require plant owners and operators to continuously monitor and record the pressure drop across the emission control device and the incinerator exhaust gas volumetric flow rate.

It is proposed to require the submission of semiannual reports indicating the periods of time of 15 minutes duration or more when the pressure drop of the emission control device falls below a specified level. The average pressure drop recorded during these periods would also be reported. Allowing periods of less than 15 minutes duration of operation at reduced pressure drop is considered reasonable for purposes of evaluating proper operation and maintenance of the control device, and will minimize the number of incidences to be reported. The reduction in pressure drop below which reporting would be required varies according to the average particulate emission rate achieved, and the average pressure drop recorded, during performance testing.

For incinerators that achieve an emission rate of 0.38 kg/Mg (0.75 lb/ton) of dry sludge input or less in a performance test, it is proposed that only those reductions in pressure drop of more than 30 percent below the average pressure drop recorded during the most recent performance test would have to be reported. The 0.38 kg/Mg (0.75 lb/ton) cutoff represents the approximate average emission rate achieved by incinerators affected by the NSPS since the previous review of the standard was completed in 1978. The proposed minimum percent decrease in pressure drop that would require reporting for incinerators that have achieved an emission rate of more than 0.38 kg/Mg (0.75 lb/ton) of dry sludge input in the most recent performance test would be based on a linear sliding scale such that incinerators achieving compliance at 0.65 kg/Mg (1.30 lb/ton) dry sludge input would be required to report each instance of 15 minutes duration or more that the pressure drop of the control device is less than the average level recorded during the most recent performance test. The use of a sliding scale for determining the minimum percent decrease in pressure drop above which reporting would be required provides less flexibility to those plants for which emissions are near the NSPS limit in a performance test. However, the likelihood that these plants would exceed the standard when operating at reduced scrubber pressure drops is greater than for plants that have achieved emissions well below the NSPS emission limit.

It is also proposed to require the submission of semiannual reports indicating all 1-hour periods of time that the average oxygen level in the incinerator exhaust gases exceeds 10 percent (wet basis). This requirement would not apply to plant owners or operators that elect to monitor the incinerator exhaust gas volumetric flow rate. The conversion from percent oxygen on a wet basis to percent excess air depends upon the chemical characteristics of the sludge and auxilliary fuel, as well as the quantity of fuel consumed. For a typical incinerator burning No. 2 fuel oil and combusting a typical sludge, 10 percent oxygen in the wet exhaust gas would correspond to between 100 and 150 percent excess air. Sewage sludge incinerators are typically designed to be operated at about 6 to 8 percent oxygen in the exhaust gases. The cutoff level of 10 percent oxygen is considered reasonable in light of design levels for sludge incinerators and was selected to avoid a reporting requirement that is unnecessarily burdensome. Because the EPA recognizes that site-specific conditions may require incinerators to be periodically operated at oxygen levels somewhat higher than the design value, a cutoff level of 10 percent oxygen was selected to provide operational flexibility. This cutoff level would not be applied to periods of startup and shutdown. Basing oxygen readings on 1-hour averages was selected to account for unavoidable short-term increases in incinerator oxygen levels. Because some incinerators might achieve compliance with the NSPS during a performance test while operating the incinerator at oxygen levels in excess of 10 percent, the proposed reporting requirements would allow those incinerators an additional increment of 3 percent oxygen (about 30 to 50 percent excess air) about the average oxygen level recorded during the most recent performance test without requiring a report.

In multiple-hearth type incinerators, a variable portion of the rabble shaft cooling air is typically combined with the gases exiting the emissions control device, and exhausted through the stack. For this reason, stack gas oxygen readings do not provide an accurate indication of incinerator oxygen levels. It is proposed, therefore, to require that the device used to monitor oxygen levels in multiple-hearth incinerators be installed in the uppermost hearth. For fluidized-bed and other incinerator types, oxygen levels may be recorded at any point upstream of the inlet to the emissions control device.

For owners or operators that elect to monitor and record the incinerator exhaust gas volumetric flow rate, it is proposed to require the submission of semiannual reports indicating all 1-hour periods of time that the average volumetric flow rate of the incinerator exhaust gas exceeds that measured during the most recent performance test. Plants that elect this monitoring option will be required to conduct a performance test at the maximum incinerator exhaust gas flow rates expected under normal operating conditions of the incinerator. Data on exhaust gas flow rates collected by the device following installation and prior to the performance test shall be considered along with the corresponding sludge characteristics and incinerator operating parameters to identify normal operating conditions under which maximum exhaust gas flowrates can be expected to occur. Any increase in incinerator exhaust gas flow rate in excess of that measured during the performance test may be indicative of increased particulate emissions. For incinerators that demonstrate particulate emissions near the NSPS limit during the performance test, an increase in incinerator exhaust gas flow rate may result in emissions in excess of the standard.

Semiannual reports prompted by either variations in scrubber pressure drop or changes in exhaust gas oxygen content shall include the following information for the entire day on which either variation occurred: (1) Hourly average scrubber pressure drop, (2) hourly average oxygen content of exhaust gases, (3) hourly average temperature profile, (4) 8-hour averages of fuel use, (5) moisture content of a single sample of sludge, and (6) volatile solids content of a single sample of sludge. For plant owners or operators that elect to monitor the incinerator exhaust gas volumetric flow rate, semiannual reports prompted by variations in scrubber pressure drop or increases in incinerator exhaust gas flow shall include the hourly average scrubber pressure drop and the hourly

average incinerator exhaust gas volumetric flow rate for the entire day on which either variation occurred.

The proposed monitoring and recordkeeping requirements would apply to all sewage sludge incinerators which are affected under the NSPS. The proposed allowable variations in pressure drop are dependent on the particulate emission rate achieved and the average pressure drop recorded during the performance test. A new performance test would be required within 360 days after promulgation for those facilities under the NSPS that have previously begun operations but were not properly equipped to continuously monitor and record the pressure drop across the wet scrubber and the oxygen content of the incinerator exhaust gases, or failed to monitor and record these parameters during the most recent performance test. As discussed above, plants electing to monitor the incinerator exhaust gas volumetric flow rate would also be required to conduct a new performance test at peak incinerator exhaust gas flow rate within 360 days of promulgation of these revisions.

The results of all monitoring and recordkeeping would be retained at the affected facility and made available for inspection by the Administrator for a minimum of 2 years.

The expansion of required measurements at the time of a performance test to include the metal content of the sludge and the metal content of emitted particulates is intended to provide information on emissions of metals and the parameters that affect these emissions. For this reason, the Agency is proposing to require during each performance test, that three composite sludge samples and three filters collected by Reference Method 5, be analyzed for various metals. Two filter samples and each of the sludge samples shall be analyzed by neutron activation for arsenic, cadmium, chromium, copper, lead, nickel, selenium, and zinc. One filter sample and each of the sludge samples shall be analyzed by atomic absorption for beryllium and lead according to Method 104 and Method 12, respectively. Recordkeeping and reporting of performance tests shall include these measurements, as well as all measurements on the days of the performance tests for the parameters that are monitored on a daily basis.

The addition of continuous monitoring, recordkeeping, and reporting requirements for sewage treatment plants will benefit the environment by encouraging facilities to properly operate and maintain process equipment and emissions control devices. There will be no adverse energy impacts as a result of this addition. The requirement to continuously monitor oxygen levels, fuel usage, and temperature profiles will assist operators in reducing fuel consumption. There will be a maximum yearly cost to each affected facility of $22,500 associated with the proposed monitoring, recordkeeping and reporting requirements. The total annualized cost associated with the installation (including retrofit costs for plants that are already in operation), operation and maintenance of continuous monitoring equipment, and performance of daily sludge analyses is $21,020. The annualized cost of recordkeeping for each facility is $920 and the cost of reporting is $560. For existing plants that are not presently equipped to continuously monitor and record scrubber pressure drop, the incremental annualized cost to retrofit these systems would be $1,850. The incremental annualized costs of the exhaust gas oxygen monitoring/recording equipment are estimated to be $5,700 for new plants and $5,900 for existing plants. The incremental annualized costs of monitoring fuel use are estimated to be $700 for both new plants and existing plants. It is generally acknowledged that some incinerators have been poorly operated, have not maintained adequate process records, and may not have achieved the existing NSPS emission limit on a continuing basis. The costs associated with the additional monitoring requirements are judged to be reasonable considering both the potential reduction in particulate emissions resulting from more efficient incinerator and scrubber operations and the improved effectiveness of enforcement activities. These costs would increase annual sewage treatment costs for small municipalities by an average of 1.2 percent. However, it should be noted that the estimated costs do not take into account the potential fuel savings which may accrue because of operation at reduced oxygen levels.

The authority for the proposed monitoring, recordkeeping, and reporting requirements is section 114 of the Clean Air Act.

Impacts of Reporting and Recordkeeping Requirements

The EPA believes that the proposed reporting and recordkeeping requirements for sewage treatment plants are necessary to aid in enforcing the emission standard after the initial compliance determination. The proposed requirement to record and report the metals content of the sludge during performance tests will provide information which will assist the Agency in determining whether or not metals are emitted from sewage sludge incinerators in quantities sufficient to warrant future regulatory action.

The information provisions associated with this proposed rule (40 CFR Part 60) will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

The average annual burden on sewage treatment plants to comply with the reporting and recordkeeping requirements of the proposed standards over the first 3 years after the effective date is estimated to be about 14,300 person-hours, based on 47 respondents per year.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires that differential impacts of Federal regulations upon small entities be identified and analyzed. The RFA states that an analysis is required if a substantial number of small entitities will experience significant impacts. Both measures, substantial numbers of small entities and significant impacts, must be met to require an analysis. If either measure is not met, than no analysis is required. Twenty percent or more of the small entities in an affected industry is considered a substantial number. The EPA definition of significant impacts involves three tests, as follows: (1) Costs of production rise 5 percent or more, assuming costs are not passed on to consumers, or (2) annualized investment costs for pollution control are greater than 20 percent of total capital spending; or (3) costs as a percent of sales for small entities are 10 percent greater than costs as a percent of sales for large entities.

The proposed revisions will impact a substantial number of sewage treatment plants serving municipalities having populations of 50,000 persons or less. Municipalities of this size are considered to be small entities. The annual cost of complying with the proposed revisions will increase the total annual cost of sewage treatment for small municipalities by about 2 percent. The ratio of annual compliance costs to total sewage treatment costs for small municipalities is less than 1

percentage point higher than the comparable ratio for large municipalities. The proposed revisions do not require any additional capital expenditures for pollution control equipment. Therefore, the proposed revisions if promulgated, will not have a significant impact on small entities, and a regulatory flexibility analysis is not required for this action.

Public Hearing

A public hearing will be held, if requested, to discuss the proposed revisions to the standard for sewage treatment plants in accordance with Section 111(b)(1)(B) and 307(d)(5) of the Clean Air Act. If a hearing is requested, persons wishing to make oral presentations on the proposed revisions to the standard should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to docket number A–84–03.

A verbatim transcript of any hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed amendments.

This regulation will be reviewed 4 years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, enforceability, improvements in emission control technology and health data, and reporting requirements.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, or innovations.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Sewage treatment plants.

Dated: April 3, 1986.

Lee M. Thomas,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Subpart O—Standards of Performance for Sewage Treatment Plants

§ 60.153 [Amended]

2. In § 60.153, paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (b), (c), (d), (e), and (f), are added to read as follows: (a) introductory text is republished for the convenience of the reader.

(a) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall:

* * * * *

(4) For incinerators equipped with a wet scrubbing device, install, calibrate, maintain and operate a device which continuously monitors and records the pressure drop of the gas flow through the wet scrubbing device. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within +250 pascals (+1 inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

(5) Except as provided in paragraph (b) of this section, install, calibrate, maintain and operate a device which continuously monitors and records the oxygen content of the incinerator exhaust gases upstream of any emissions control device. For multiple-hearth type incinerators, the oxygen monitoring device shall be installed in the uppermost hearth. For fluidized bed and other incinerator types, the oxygen monitoring device shall be located upstream of the inlet to any emissions control device. The oxygen measuring device shall have an accuracy of ±5 percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

(6) Except as provided in paragraph (b) of this section, install, calibrate, maintain and operate a device which continuously monitors and records temperatures at every hearth in multiple hearth furnaces and in the drying, combustion, and cooling zones of fluidized bed and electric incinerators. For multiple-hearth type incinerators, a minimum of three thermocouples shall be installed in each hearth.

(7) Except as provided in paragraph (b) of this section, install, calibrate, maintain and operate a device which continuously monitors the fuel flow to the incinerator.

(8) Except as provided in paragraph (b) of this section, collect a grab sample of the sludge fed to the incinerator on a daily basis. The dry sludge content and the volatile solids content of the sample shall be determined in accordance with the method specified under § 60.154(c)(2), except that determination of volatile residue, step (3)(b), may not be deleted.

(b) In lieu of the requirements prescribed in paragraphs (a)(5), (a)(6), (a)(7), and (a)(8), an owner or operator may elect to install, calibrate, maintain, and operate a device which continuously monitors and records the incinerator exhaust gas volumetric flow rate upstream of any emissions control device. The owner or operator shall submit a description of the device, including the type of device, the location of the device, and the method and schedule for calibration of the device to ensure that volumetric flow of exhaust gas is accurately measured, to the Administrator for approval.

(c) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall retain the following information and make it available for inspection by the Administrator for a minimum of 2 years:

(1) For incinerators equipped with a wet scrubbing device, a record of the

measured pressure drop of the gas flow through the wet scrubbing device, as required by paragraph (a)(4) of this section.

(2) A record of the measured oxygen content of the incinerator exhaust gas, the temperature profile of the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sludge fed to the incinerator, as required by paragraphs (a)(5), (a)(6), (a)(7), and (a)(8) of this section. This requirement does not apply to incinerators that monitor the incenerator exhaust gas volumetric flow rate as provided in paragraph (b) of this section.

(3) For incinerators that monitor the incinerator exhaust gas volumetric flow rate, a record of the incinerator exhaust gas volumetric flow rate shall be retained in lieu of the recordkeeping requirements in paragraph (c)(2) of this section.

(d) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall submit to the Administrator on a continuing basis each 180 days a report in writing containing the following:

(1) The periods of 15 minutes duration or more for which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The average value of pressure drop recorded during each such period shall be specified in the report. The percent reduction in scrubber pressure drop for which a report is required shall be determined on the following basis:

(i) For incinerators that achieved an average particulate emission rate of 0.38 kg/Mg (0.75 lb/ton) dry sludge input or less during the most recent performance test, a reduction of more than 30 percent in the average pressure drop recorded during the most recent performance test.

(ii) For incinerators that achieved an average particulate emission rate of greater than 0.38 kg/Mg (0.75 lb/ton) dry sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation:

$$P = -111E + 72.15$$

where

P = Percent reduction in pressure drop, and
E = Average particulate emissions (kg/megagram)

(2) The periods of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds 10 percent, and the corresponding 1-hour average oxygen content during these periods. For incinerators that achieved the standard at measured incinerator exhaust oxygen levels of more than 10 percent during a performance test, reports shall be submitted indicating the periods of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average percent oxygen recorded during the most recent performance test by more than 3 percent oxygen, and the corresponding 1-hour average oxygen content during these periods. This requirement does not apply to incinerators that monitor the incinerator exhaust gas volumetric flow rate as provided in paragraph (b) of this section.

(3) For incinerators that monitor the incinerator exhaust gas volumetric flow rate, the periods of 1-hour duration or more that the incinerator exhaust gas volumetric flow rate exceeds the average flow rate measured during the most recent performance test, and the corresponding 1-hour average volumetric flow rate during these periods.

(4) For each day that a decrease in scrubber pressure drop or increase in exhaust gas oxygen content is reported, all hourly averages of scrubber pressure drop, oxygen content of incinerator exhaust gas, and incinerator temperature profiles; fuel use averaged over each 8-hour incinerator operating period; and moisture and volatile solids content of the sludge sample for that day; except as provided in paragraph (d)(5) of this section.

(5) For incinerators that monitor the incinerator exhaust gas volumetric flow rate, the report shall include for each day on which a decrease in scrubber pressure drop or an increase in incinerator exhaust gas volumetric flow rate is reported, all hourly averages of scrubber pressure drop and incinerator exhaust gas flow rate.

(e) Except as provided in paragraph (f) of this section, the owner or operator of any sludge incinerator subject to the provisions of this subpart for which the monitoring systems required under paragraphs (a)(4) and (a)(5) were not installed at the time of the most recent performance test shall conduct another performance test within 360 days of the effective date of these regulations. The owner or operator shall provide the Administrator at least 30 days prior notice of the performance test to afford the Administrator the opportunity to have an observer present.

(f) The owner or operator of any sludge incinerator that elects to monitor the incinerator exhaust gas volumetric flow rate as provided in paragraph (b) of this section shall conduct another performance test within 360 days of the date of approval of the device by the Administrator. The performance test shall be conducted under conditions based on historical operating data that result in the peak expected incinerator exhaust gas volumetric flow rate under normal operating conditions. The owner or operator shall provide the Administrator at least 30 days prior notice of the performance test to afford the Administrator the opportunity to have an observer present.

2. In § 60.154, paragraphs (e) and (f) are added to read as follows:

* * * * *

§ 60.154 Test methods and procedures.

(e) After the samples collected by Reference Test Method 5 have been analyzed for particulate mass, the three samples shall be analyzed as follows. Two samples shall be analyzed by neutron activation for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc; and one sample shall be analyzed by atomic absorption for beryllium and lead. The sample analyzed for beryllium and lead shall be analyzed according to Method 104 and Method 12, respectively.

(f) During the performance test, sludge samples shall be collected for the purpose of determining the metals content of the sludge. Samples will be collected from the sludge charged to the incinerator at the beginning of each run and at approximately 30 minute intervals thereafter until the test run ends. The sludge samples collected during each test run shall be combined into a single composite sample. During the performance test, three composite samples will be generated. The composite samples shall be analyzed for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc by neutron activation procedures. The composite samples shall be analyzed for beryllium and lead by atomic absorption according to Method 104 and Method 12, respectively.

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Reader Aids

Federal Register

Vol. 51, No. 75

Friday, April 18, 1986

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Code of Federal Regulations

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Laws 523-5230

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Executive orders and proclamations	523-5230
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United States Government Manual 523-5230

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Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

11007-11284.....1
11285-11418.....2
11419-11538.....3
11539-11702.....4
11703-11894.....7
11895-12116.....8
12117-12302.....9
12303-12496.....10
12497-12594.....11
12595-12678.....14
12679-12818.....15
12819-12982.....16
12983-13202.....17
13203-14434.....18

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III..... 11928, 12332, 12981

3 CFR

Proclamations:
4707 (Superseded in part by Proc. 5452).....11539
4768 (Superseded in part by Proc. 5452).....11539
5365 (Superseded in part by Proc. 5452).....11539
(Superseded in part by Proc. 5453).....11545
5452.....11539
5453.....11545
5454.....12119
5455.....12303
5456.....12305
5457.....12679
5458.....12681
5459.....12983
5460.....13203

Executive Orders:
12556.....13205

Administrative Orders:
Presidential Determinations:
No. 86-8 of March 25, 1986..... 12117

5 CFR
Ch. XIV.....12595
530.....11007
536.....12683
950.....11668

Proposed Rules:
530.....11043

7 CFR
Chapter X.....12830
246.....13207
247.....11008
250.....12819
251.....12819
272.....11009, 12307
273.....11009, 12307
278.....12497
371.....11703
400.....11704, 12307
418.....11285
436.....11285
444.....11286
445.....11291
449.....11895
614.....12826
701.....12985
713.....11419
760.....12986
770.....11419
795.....11419
796.....11419
800.....12829
907.....11419
908.....11419
916.....11900
917.....11900
925.....12498, 13208
944.....12498, 13208
1006.....11551
1094.....11552
1106.....11297
1135.....12834
1230.....11553
1260.....11557
1421.....11419
1425.....11419
1427.....11419
1430.....11526
1902.....12307
1924.....12307
1930.....12307
1944.....11298, 12307
1951.....11562
1965.....11562

Proposed Rules:
1.....11930
27.....12624
28.....12624
51.....12522, 13008
52.....11043, 11744
61.....12624
226.....12711
271.....12268
272.....12268
273.....12268
274.....12268
275.....12268
276.....12268
652.....11053
729.....11274
907.....11931
908.....11931
982.....11932
999.....11932
1032.....11452
1040.....11053
1094.....11452
1106.....11453
1240.....11313
1493.....11744
1980.....13008

8 CFR
223.....12595
223a.....12595
238.....13209, 13210

9 CFR
51.....11299
75.....12596
91.....12121
94.....11902, 12987

Proposed Rules:
93.....11316
381.....12161

10 CFR
110.....12598

Proposed Rules:
Ch. I.....12162
2.....12629
50.....12502
430.....12861
904.....12333

12 CFR
201.....11903

535.....12865
564.....12122

Proposed Rules:
225.....12865
226.....11422
620.....11745

13 CFR
121.....11705

14 CFR
39.....11300, 11301, 11704–11714, 12123, 12506, 12507, 12509, 12511, 12684, 12690, 12836, 12988, 12989, 13211
71.....11426, 11564, 11715, 11886, 12512, 12693, 12837
73.....12512
95.....12694
97.....11564, 12513

Proposed Rules:
Ch. I.....12163
21.....11933
23.....11933
39.....11321, 11322, 11748–11750, 12870
71.....11454, 11455, 11585, 11752, 12524
75.....12871
91.....11942

15 CFR
368.....12837
370.....12838, 12840
371.....12838
372.....12838
373.....12838
375.....12838
376.....12838
377.....12838
379.....12838
386.....12838
399.....12838, 12840
806.....11012

Proposed Rules:
917.....12525

16 CFR
13.....11904

Proposed Rules:
13.....12629, 13020

17 CFR
32.....12698
33.....11905
230.....12842
239.....11907, 12842
240.....11907, 12124
249.....11907
259.....11907
269.....11907
274.....11907

Proposed Rules:
30.....12104

18 CFR
2.....11566, 11716
3.....12137, 13211
157.....11566–11569, 11716
284.....11566–11569, 11716
389.....11716

19 CFR
18.....11012
24.....11012
101.....11013, 12843
112.....11012
113.....11012
141.....11012
144.....11012
146.....11012
178.....11012
191.....11012

Proposed Rules:
101.....12339
175.....12712

20 CFR
295.....12844
404.....11717, 11910, 12600
416.....11717, 12600

Proposed Rules:
655.....11942, 12872

21 CFR
5.....11427, 11429
73.....11430, 11432, 11435, 12607
74.....11014
82.....11014
145.....11433
160.....11434
173.....11719
178.....12607
179.....13376
193.....11437
430.....11571
436.....11571
441.....11571
510.....11437–11439
520.....11439, 13212
522.....11437
529.....11438, 11440
555.....11441
558.....11014, 11438, 11439, 12137
561.....12138
720.....11441
882.....12100

Proposed Rules:
Ch. I.....13023
74.....11054
150.....11054
163.....12631, 12632
172.....12163, 12632
175.....12163, 12632
176.....12163, 12632
177.....12163, 12632
179.....12163, 12632
181.....12163, 12632
201.....13023
501.....11456
812.....11266, 12713
868.....11516
1308.....13025

22 CFR
501.....11014
503.....11014
504.....11016
505.....11016
506.....11014
511.....11014
516.....11014
525.....11014

23 CFR
140.....11576
1325.....11445

Proposed Rules:
645.....11055

24 CFR
42.....12848
43.....12848
58.....12848
115.....11577
200.....11198
207.....13140
215.....11198
235.....11198
236.....11198
247.....11198
251.....13140
255.....13140
280.....12848
511.....12700
571.....12848
812.....11198
850.....12848
880.....11198, 12848
881.....11198, 12848
882.....11198, 12848
883.....11198, 12848
884.....11198
885.....12308
886.....11198
912.....11198
941.....12848

26 CFR
1.....11016, 11302
35a.....11447
48.....12515
301.....13212
602.....11016, 12515

Proposed Rules:
1.....11323, 11324, 11753, 12022, 12340–12341
3.....12022
5f.....12022
6a.....12022
25.....12022
31.....12341
301.....13231
514.....12022

27 CFR
9.....11912
19.....13215
240.....13215

Proposed Rules:
4.....11944
5.....12342
9.....11753, 12876

28 CFR
0.....12848
2.....11017

29 CFR
4.....12264
5.....12264
1602.....11017
2201.....11578
2610.....12488
2616.....12489, 12491, 12701
2617.....12489, 12491, 12701
2619.....12701
2623.....12489, 12491, 12701

Proposed Rules:
553.....13402, 13411, 13413
1910.....12526
1926.....11945

30 CFR
870.....11720
917.....11579, 12138
935.....12141

Proposed Rules:
Ch. II.....12163
5.....12966
7.....11586
15.....12966
16.....12966
17.....12966
18.....12966
19.....12966
20.....12966
21.....12966
22.....12966
23.....12966
24.....12966
25.....12966
26.....12966
27.....12966
28.....12966
29.....12966
31.....12966
32.....12966
33.....12966
35.....12966
36.....12966
74.....12966
250.....11324
773.....12879
778.....12879
904.....12713
918.....11586
935.....11055, 11588, 11589
944.....12166

31 CFR

Proposed Rules:
51.....11056

32 CFR
291a.....12312
552.....11722
701.....11018
706.....11303–11305, 12142–12144, 12515, 12516, 12850, 12851, 13217
834.....12313

33 CFR
3.....11914
66.....11447
100.....12990
110.....11726, 12313, 12314
117.....12318–12320, 13218
146.....11580
162.....12314
165.....11019, 11448, 11727, 12990
175.....11580
181.....11580

Proposed Rule:
100.....11590
117.....12342
166.....11755

34 CFR
614.....13219
682.....12764

Proposed Rules:
692.....12480

36 CFR
261.....12991

Proposed Rules:
1254.....13026
1260.....13026

38 CFR
18.....12702
18a.....12702
18b.....12702
21.....12321, 12852

39 CFR
111.....12992

Proposed Rule:
10.....12343
111.....11324

40 CFR
51.....11414
52.....11019, 11305, 12321–12323, 12517, 12853, 13000
60.....11021, 11727, 12144, 12324
61.....11021, 12144
131.....11580
141.....11396
142.....11396
143.....11396
166.....11306
180.....11306–11308, 11448, 12145, 12146, 12854
261.....12148
704.....13220
799.....11728

Proposed Rules:
50.....11058
52.....11756, 12882, 12884, 13027, 13029
60.....13424
180.....12168, 12885–12887 12889
440.....12344
721.....11591, 13250
763.....11947
766.....12344
799.....11756, 12344

41 CFR
50–201.....12264
101–20.....11022
101–38.....11684
101–39.....11022

42 CFR
57.....11029, 12608

400.....11581
405.....11142, 11582
435.....12325, 12855
442.....13224

Proposed Rules:
405.....12714

43 CFR
2200.....12609
3480.....13228

Proposed Rules:
4.....12168
431.....12678

44 CFR
64.....12152, 12612
65.....12153, 12154
67.....12155
302.....12518

Proposed Rules:
61.....12348
67.....12175, 12890
205.....13332, 13336, 13340, 13341, 13357, 13364

45 CFR
205.....13001

Proposed Rules:
5.....13250
1178.....11597

46 CFR

Proposed Rules:
381.....12176
383.....12176

47 CFR
0.....12157, 12614, 13229
1.....12157, 12614
2.....12614
15.....12614
18.....12614
43.....12157
65.....11033
67.....11035, 12702
68.....12614
73.....11037–11040, 11583, 11914–11917, 12159, 12160, 12614, 12616, 12703

Proposed Rules:
2.....12897
21.....13258
64.....11948
69.....11328
73.....11058, 11072, 11598–11600, 11950–11956, 12176–12179, 12722, 12898, 12899, 13031, 13259, 13260, 13262, 13263
76.....11073
90.....11075
97.....11759

48 CFR
1.....12296
8.....12292
22.....12292
31.....12296
52.....12292
53.....12292
242.....12330
513.....12704
553.....12704
706.....11449
716.....11449
725.....11449
752.....11449, 12706

Proposed Rules:
31.....12676
203.....11760
209.....11602
252.....11602, 11760
904.....11457
952.....11457
970.....11457, 11701
1401.....11075
1405.....11075
1406.....11075
1408.....11075
1414.....11075
1415.....11075
1419.....11075
1420.....11075
1428.....11075
1437.....11075
1452.....11075
1453.....11075

49 CFR
1.....12617, 12618
301.....12619
388.....12619
389.....12619
390.....12619
391.....12619
394.....12619
395.....12619
501.....12706
531.....12855
541.....11919
565.....11309
571.....11309, 11310, 12856
1023.....12710

Proposed Rules:
172.....12529
173.....12529
571.....11957, 12900, 13022
1042.....12530
1150.....13035
1312.....11536

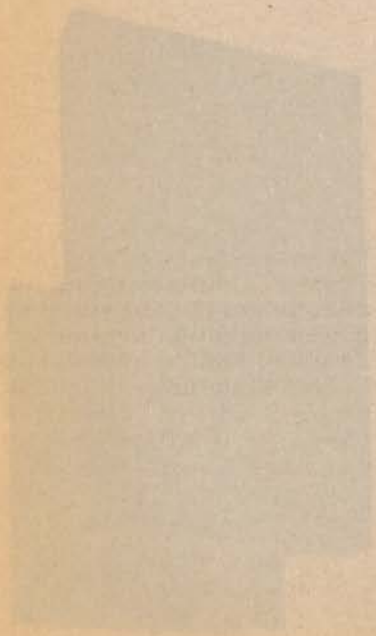
50 CFR
228.....11737
619.....11921
642.....11041, 11310, 12857
650.....11041, 11927
655.....11451, 11742
663.....12622
671.....11041, 12857

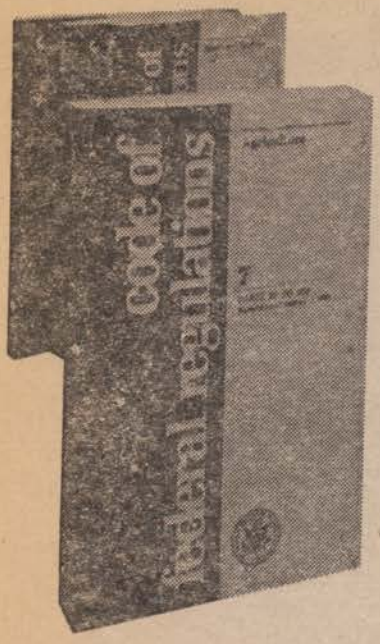
Proposed Rules:
17.....11761, 11874, 11880, 12180, 12184, 12444–12460
23.....11328, 12350
91.....13035
611.....12632
630.....12632
683.....12531

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 14, 1986.





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